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TRANSCRIPT OF RECORD
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Supreme Court of the United States

OCTOBER TERM, 1963

No. 188

**UNITED CONSTRUCTION WORKERS, AFFILIATED
WITH UNITED MINE WORKERS OF AMERICA,
ET AL, PETITIONERS,**

vs.

LADUENUM CONSTRUCTION CORPORATION

**ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF APPEALS OF
THE COMMONWEALTH OF VIRGINIA**

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Vol. III

page 1159 } AFTERNOON SESSION.

2:15 p. m.

(The following proceedings were had in Chambers:)

Mr. Robertson: If Your Honor please, Mr. Moore has prepared a memorandum on the law about these interrogatories, in addition to the memorandum that Mr. Allen prepared; and I am going to ask Mr. Moore to lead off for our side, and Mr. Allen to wind up for our side.

Mr. Moore: Your Honor, as we have stated in this brief memorandum, we believe the cause now pending before this Court affords a unique situation in that from the very beginning of this proceeding there was much material information which was within the exclusive control of the Defendants. Since this information was essential to the Plaintiff's case, it was necessary for the Plaintiff to propound a large number of interrogatories to the three Defendants.

Under the procedure followed by this Court in the pre-trial conferences, a final ruling on each question was reserved until the trial of the case when such question and answer were sought to be introduced in evidence. In other words, the Court temporarily required the parties to answer certain questions before the trial, but the Court still may decide that all of the questions or none of the questions shall be answered and admissible in evidence.

In the present case, the Plaintiff filed interrogatories pursuant to Section 8-320 *et seq.* of the Code of page 1160 } Virginia, 1950. The meaning of Section 8-320 was settled in the case of *Long v. Hawse*, 155 Va. 769 (1931), where the court said at page 377:

"The purpose of section 6236 (now 8-320) is to give a party to an action at law a simple and expeditious method of securing in his action at law the information which he might obtain by a bill of discovery in equity, and a proceeding under

this section affords as full and ample relief as can be had under a pure bill of discovery."

Exactly what relief is obtainable is a pure bill of discovery is explained by Professor W. M. Lile in his well known treatise on Equity, Pleading and Practice at pages 75 and 76. Here it is stated that the object of a pure bill of discovery is to give the party any information which may be material to his case. See also *M'Farland v. Hunter*, 8 Leigh (35 Va.) 489 (1836); *Larkey v. Gardner*, 105 Va. 718 (1906); 6 Michie's Jurisprudence 195.

It is further provided in Section 8-321 that interrogatories shall be answered "when the court in which the case is, * * *, is satisfied that the interrogatories are relevant."

The next section of the Code (Section 8-322) provides answers to interrogatories shall be used in the same manner as if obtained upon a bill of discovery. The cases explaining the manner in which the answers to a pure bill of page 1161 } discovery may be used show first, that answers may be introduced in evidence only by the party who propounded the questions. See *M'Farland v. Hunter*, *supra*; *Vaughn v. Garland*, 11 Leigh (38 Va.) 251; 6 Michie's Jurisprudence 207.

Secondly, the cases show that when part of an answer to a question is read, the whole of that answer must be read so as to include any part that may be favorable or prejudicial to either side. Authorities for that proposition are *Fant v. Miller*, 17 Gratt. 187, and again, *M'Farland v. Hunter*. These two cases also show that the weight to be given the answer or answers introduced in evidence is to be determined by the jury in comparison with the other evidence offered in the case.

The third principle to be derived from the above cases is that once one question and answer have been read to the jury, the whole of the questions and answers must be introduced in evidence. But these cases do not hold, nor do any other Virginia cases hold that the whole of all of the questions and answers must be read to the jury as contended by the Defendants in the present case.

As we view it, there are two possible solutions to the problem of the interrogatories filed in the present case. The first is set out on page 4 of our memorandum:

In order to expedite the trial of the present case, the Plaintiff is willing to waive all objections to any of the page 1162 } interrogatories and introduce all of them in evidence. If this arrangement is satisfactory to all parties, then each side would be permitted to read to the jury

any questions and answers they wish to be brought to the particular attention of the jury. The obvious advantage of this solution to both sides is that it would cause the least delay. To hear objections and argument on each question and answer would likely take several days.

The second solution would be necessary if all parties are not willing to adopt the expeditious method set forth above. Under this method, the Court would be required to hear argument on each question and answer since the law provides irrelevant questions in interrogatories may be objected to. The questions and answers which the Court rules are admissible will be introduced as evidence to go to the jury. Since the law does not require that all of the questions and answers must be read to the jury, the parties may read to the jury only such admissible questions as they desire.

It should also be noted that the interrogatories directed to the various parties in the present case have been propounded in different sets or series. In this connection, there is nothing in the law which requires a party who introduces one set or series to also introduce all other sets of interrogatories propounded by that party. Therefore, if the Plaintiff introduces Interrogatories Number 4, 5 and 6, for example, that action does not mean the Plaintiff has to also introduce all other sets of interrogatories propounded by him.

I think Mr. Allen would like to discuss his memorandum and go into more detail on a few points of law.

Mr. Allen: I thought you would discuss the whole thing, and then I could conclude the discussion.

Mr. Moore: Either way you gentlemen want to work it. It is up to you.

Mr. Allen: I think, Your Honor, since we have received no reply to our brief, it would be better to let them come along, and then let me close the discussion on our side, because you have had a copy of the brief and I think I gave a copy to both Mr. Mullen and Colonel Harris.

The Court: Is there any objection to that procedure, gentlemen?

Mr. Mullen: I would like to hear them open pretty fully, Judge.

Mr. Allen: I opened as fully as I could in the memorandum that I wrote, and I am relying upon that. If you wish me just to discuss that, I should be glad to do so, but I shall follow the memorandum pretty closely.

The Court: It is up to you gentlemen. I have read the memorandum, and I have read your memorandum page 1164 { dum, also, Mr. Mullen.

Colonel Harris: I have not read the memorandum that Mr. Allen furnished me.

The Court: Would you like Mr. Allen to discuss this memorandum, Colonel Harris?

Colonel Harris: I am going to rely on Mr. Mullen to do practically all the argument for our side. It is a question of Virginia practice and procedure, and he knows vastly more about it than I will ever know.

The Court: Very well.

Mr. Mullen?

Mr. Mullen: If Your Honor please, this question is not unique in Virginia law. It has been decided, and there are no cases contrary to the three decisions that have been handed down by our Supreme Court of Appeals.

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I don't believe the English language could be any clearer. All three of those cases states specifically that if the interrogatory is used, it must be read as a whole to the jury.

The decision in *McFarland v. Hunter*, the conclusion of which I have read to the Court, followed a long discussion of cases, some from the English courts, some from ours, and I submit that every one of those cases as cited on pages 3 and 4 in that discussion, and on page 5, is absolutely in substantiation of what has been said in the cases decided by our own Supreme Court.

The Court passes, in determining whether questions should be answered, whether they are relevant to require answer. It doesn't pass at that time on the relevancy of them in the trial. That is another question.

The question that we are speaking of here now is that the Court decided these were proper questions and had to be answered. That is all that the statute refers to with reference to relevancy.

The solutions suggested would be entirely contrary to the decisions of our Court. They were: "In order to expedite the trial of the present case, the Plaintiff is willing to

waive all objections to any of the interrogatories
page 1170 } and introduce all of them in evidence.”

The Plaintiff doesn't say they will read them all.

“If this arrangement is satisfactory to all parties, then each side would be permitted to read to the jury any questions and answers they wish to be brought to the particular attention of the jury. The obvious advantage of this solution to both sides is that it would cause the least delay.”

We are not the ones who brought about this situation. I thought all the time when they were filing all these long interrogatories, that they were simply piling up trouble for themselves, and that is what has happened, and that is what they now want to get out of.

The second thing is: “If all parties are not willing to adopt the expeditious method set forth above, the Court will be required to hear argument on each question and answer since the law provides irrelevant questions in interrogatories may be objected to.”

We have already objected to the questions as irrelevant to be asked, and that is what Your Honor has passed on, and that is what the statute says. When the Court is satisfied it is relevant to ask the questions, then the interrogatories must be answered. It doesn't mean that at a later time at the trial they can't be objected to, but certainly it is a new proposition that a party propounding the ques-
page 1171 } tions can raise the question of the relevancy of the questions which it has propounded. That is the most remarkable argument that I have ever heard.

They want to come in court now and say, “Yes, we asked these questions, but they are not relevant and therefore we don't want to read them to the jury. We ask the Court to say they are not relevant.”

That is the most unusual request. I can't imagine any possible right to take any such position as that.

As to the question of whether they can read different series, if they had separate and independent interrogatories, probably they could. If they have addressed them to different defendants, 4, 5, and 6, I don't know anything to prevent them from reading 4 and not reading 5 and 6; but if they read 4, they have to read all of 4, and if they read 5, they have to read all of 5.

It would be manifestly unfair to permit them to address interrogatories and then undertake to pick out those which are favorable and those which are not favorable.

These cases which I have read stress that. They stress that you must read not only those admissions which are against the party to whom they are propounded, but it says even the affirmative arguments that they may make in those answers must be read. It is manifest that it was never intended that interrogatories should be used for

page 1172 } the purpose of getting discovery and culling out that which they want and leaving that which they don't want and that which is against interest. That is the reason these cases point out they must be read as a whole. The word used all through these cases is that they must be read as a whole.

page 1173 } The Court: What about these lengthy documents and journals, Mr. Mullen?

Mr. Mullen: They are part of their interrogatories.

The Court: For instance, the Defendants furnished certain copies of the journals of the Defendants. Do you contend that they have to pick up each journal and start at the first page and go right through?

Mr. Mullen: They called for them as part of the answer that they wanted?

Colonel Harris: Judge, in one particular I have a slightly different opinion about the law from what Mr. Mullen has argued. We haven't had time to consult on that. You were through, weren't you? I don't mean to interrupt.

The Court: I didn't mean to interrupt you Mr. Mullen.

Colonel Harris: I beg your pardon. I thought you were through. You go ahead.

The Court: You may want to answer that question.

Mr. Mullen: In 1 A. L. R. at pages 88-91 it is stated:

"b. Answers to bills of discovery. In the case of answers to bills of discovery, made use of against the pleaders in actions at law, the rule is that the whole of the answers must be offered into evidence, and not merely, as in the case of answers in equity suits for relief, the portions thereof relating to the admissions desired to be taken advantage of by the complainants. The complainant in the bill of discovery, if he introduces into the legal action, in aid of which the bill is filed, any portion of the defendant's answer thereto, is bound to introduce the whole of it into evidence."

Then it further states:

"c. Answers to interrogatories authorized by statute. Under statutes providing for the filing of interrogatories in

actions at law, and the use of the answers as evidence in the same manner as if procured upon bills in chancery for discovery, the answers to such interrogatories are, in analogy to the answers to bills of discovery, to be offered as a whole by the proponent, if he makes use of any part thereof. And it has been pointed out *supra* that no exception to this rule exists, on the ground of the irresponsiveness of any portion of the answers so made in reply to interrogatories."

I think, Your Honor, that the law is very clear. I don't think there is any question about it. Mr. Allen's statement that the Court was not passing on interrogatories in one of the cases, at least, I don't think is an answer because this is statutory. The statute says that they may be read with the same effect as a bill of discovery, and therefore a decision of our court as to when a bill of discovery can page 1175 } be read and the manner in which it can be read is just as much a decision on interrogatories as it is on a bill of discovery, because the statute has made them one and the same for that purpose.

Now, Colonel.

Colonel Harris: The point occurs to me—and I offer it with all deference—that the whole rule that Mr. Mullen has read to you could be circumvented completely if a litigant could ask 20 interrogatories on the first and 20 more on the 8th, and 20 more on the 15th, and break his questions up into separate sets. Interrogatories are never just one question. I have never bumped into an interrogatories with just one question in it in my life, and no matter whether those questions are put on one set or two sets or three sets they all constitute the interrogatories. The rule of law, it seems to me, that would obtain—and I judge that there is no Virginia decision on it—is that they can't by splitting up into sets, escape the requirements of the cases that they have to read all their interrogatories or none of them.

That is all I have to say, Your Honor.

The Court: All right, gentlemen.

Mr. Allen: May it please Your Honor, interrogatories are merely an additional means of discovery, a statutory means of discovery, a means of discovery in addition to page 1176 } that provided for a pure bill of discovery. The statute provides for the issuance of the interrogatories and that statute uses the word "relevant." I think that is very significant. That statute uses the word "relevant." We may concede, just for the purpose of this argument, without admitting it, that you did pass on the relevancy. Although you reserved all of your rulings in connection with

the interrogatories, for the moment let's concede that when you decided to compel them to answer the interrogatories that you did pass on the relevancy. Nothing was said in the statute about the materiality of the answers. All of the cases on the subject provide that the answers are admissible only when material. That is for the protection of the plaintiff. If the plaintiff asks an interrogatory that is relevant and Your Honor rules that the defendant has to answer it, the defendant can't make a self-serving, irresponsible, immaterial answer and compel us to read it. The question is not whether the interrogatories are admissible, but whether the interrogatories taken together with the answers furnish material evidence. Just as the bill of discovery law provides that the object of a pure bill of discovery is to seek material evidence in the hands of the defendant, the object of the statutory interrogatories is to seek material evidence that is relevant.

Your interrogatory first has to be relevant.
 page 1177 } The statute wisely uses only the word "relevant" because the Court cannot determine the materiality of them until it sees the answers.

To adopt the rule followed by these gentlemen, we would have to read the answers however immaterial. When we go inside of the defense, so to speak, by statutory interrogatories to seek information that they alone had in connection with the relationship of these several unions, we are not bound by information that is immaterial; we are not required to read to the jury a lot of answers which show nothing. A lot of the information we asked for they claimed they didn't have. The answer just means nothing. There isn't anything to it at all.

If you bear the principle in mind that there is a distinction made between the use of the word "relevant" in the interrogatory and the word "material" in the cases when they come to the question of the admissibility of the answers, I think the question is easier of solution.

I go back to the proposition, with the greatest respect for my good and able friend, Mr. Mullen over there, I disagree with him on his statement that this question has ever been decided in Virginia. Every single case on this subject was not discussing whether all of the interrogatories and answers had to be physically read to the jury. They were discussing the weight to be given to an answer to a
 page 1178 } pure bill in chancery when admitted in an action at law. The words "read" and "introduced" are interchangeably used through the cases. For instance, in that same case referred to by Mr. Mullen, in which he read the closing remarks of Judge Carr, the case of *Mc-*

Farland v. Hunter, 8 Leigh 489, you will find a concurring opinion there by Judge Cabell. He reviews the whole matter, concurs with Judge Carr, and winds up with a paragraph which clearly indicates that he considers the word "read" and the word "introduced" as being synonymous. He said, and I am quoting now Judge Cabell:

"I am, upon the whole, of opinion, 1st. That neither party is entitled to introduce his own answers in evidence to the jury, though they have been drawn from him by interrogatories; for the defendant to a bill of discovery can never introduce his answer to that bill, as evidence on a trial at law. 2dly. That the plaintiff, after the answers to the interrogatories are filed, may waive introducing them to the jury. And 3dly. That if he does introduce them, they have the effect only of a confession; they must all go together to the jury, who must give them such weight as they think them entitled to, when placed in the scale of the countervailing testimony which the plaintiff is at liberty to give."

If you will read the entire discussion in the *McFarland* case by Judge Carr down to the point where he page 1179 } summarizes his remarks, beginning with "These remarks disclose the whole rationale" and to the end, which Mr. Mullen read, if you go back a little further and read about two pages there, you will find that Judge Carr uses all the way through numerous expressions like this:

"Where one party reads a part of the answer of the other party in evidence, he makes the whole admissible only so far as to waive any objections to the competency of the testimony of the party making the answer."

"* * * where an answer is given in evidence in a court of the party is entitled to have the whole of the answer read * * * That one part of an answer may be read in this court against a party, without reading the answer throughout * * *"

Here the judge is talking about reading an answer that is filed in an equity case, not reading an answer to a pure bill in chancery that is filed in a law case as a result of filing a bill of discovery.

"* * * where the bill is for discovery only, and the answer is read for that purpose, you read the whole. But when relief is prayed and the plaintiff replies to the answer, putting the whole in issue, he cannot, reading the answer as to the

contract and the consideration, stop at the end of a sentence, but must proceed to the completion of the immediate subject to which the defendant is answering; but that page 1180 } does not apply to distinct matters."

He is still talking about an answer in chancery, one that is filed in a chancery suit.

"The answer to a mere bill of discovery * * * if read at law, it is read as evidence, and the whole answer must be laid before the jury."

He doesn't say "read". He said "laid before the jury."

"Another law, it is true, if an answer is proposed to be read as evidence, the whole answer must be read; though there were declarations of judges * * * that there is no reason for reading the whole."

"With respect to a party whose answer is adduced having a right to insist upon the whole being taken together, provided it is relied on at all, a distinction must be taken * * * between its being a part of the proceedings in the very suit depending, and being merely a matter of evidence in a different cause."

In equity "A bill is filed, an answer is put in, the plaintiff either sets down the cause for hearing upon bill and answer, which is an admission of the truth of the whole, and merely bringing the sufficiency of it into contest; or he replies to the answer, putting the whole in issue generally, whereupon the defendant must substantiate by proof all the facts upon which he means to insist, while the plaintiff may page 1181 } rely upon every fact admitted, which he conceives to be material * * *"

"But when an answer is adduced as evidence in a court of law, no part of it is immediately in issue, neither does it form any direct proceeding in the cause. It is only one among other media for the investigation of the truth. And if one side introduces it at all, the other side may insist on the whole being read * * *"

He is talking about the answer.

"* * * the plaintiff, after the answers to the interrogatories are filed, may waive introducing them to the jury * * *"

If he does introduce them * * * they must all go together to the jury * * *

He is talking about the interrogatories.

Wigmore, who *cofers* everything in the world—there isn't a subject or rule of evidence under the shining sun that Mr. Wigmore doesn't touch and discuss—discusses in his book at length the difference between equity proceeding where answers are filed in an equity cause and the case of a pure bill of discovery where the answer is filed there, and then there is an effort to use the answer at law. Then he discusses the question of statutory interrogatories, and he goes into that and says that some states provide that the statutory interrogatories shall be regarded and used in the same mannner as an answer to a pure bill of discovery when the page 1182 } answer is used at all.

In Volume 4 of his Second Edition he deals with that subject and he winds up with this section, Section 2124:

"Party's answers to Statutory Interrogatories. Keeping in mind the orthodox difference between the use of an answer as a pleading in chancery and its use in a trial at law as evidence * * *, the proper treatment of an opponent's answers to interrogatories or authorized by statute ought not to be difficult to determine.

"If, as in some jurisdictions, the statute authorizes these to be used as an answer to a bill of discovery"—that is what our statute does—"could be used, then the plaintiff who uses any part must put in the whole, and cannot stop with the parts grammatically corrected; in other words, the rule applies for using answers as evidence at law * * *, not the rule for using them as pleadings in chancery."

There is his construction of these various statutes, exactly like ours.

"If, however, the statute does not put such answers on the footing of discovery—we need not discuss that because ours does put it on that.

Then he goes on to say:

"In any event"—regardless of whether the statute puts it on the basis of a discovery at law or whether it page 1183 } deals with interrogatories on the basis of an answer filed in equity. He said "In any event, the decision is of little practical consequence, because not only

may the opponent put in the remainder of the document * * * and no question of admission by pleading is involved, but he may also take the stand on his own behalf if he desires."

Of what importance is this decision to be made here? We say that a lot of these answers are absolutely immaterial. We object to them. We are going to insist upon our objections. Mr. Mullen said we can't object to the relevancy of the interrogatories themselves. Let's concede that for the sake of argument. We thought they were relevant when we asked them. We thought so or we wouldn't have asked them. When we receive the answers they may not be revelant, but if they are, we say they are certainly not admissible. A lot of evidence that is relevant is not admissible. A lot of hearsay evidence is relevant, but hearsay evidence is not always admissible. So there is quite a distinction between evidence that is relevant and evidence that is admissible. The interrogatories may be relevant according to the statute, and Your Honor may have been correct in directing them to answer, but that doesn't mean at all that they are admissible.

There is no rule of law to be found anywhere in the books.

We offer all of these interrogatories in evidence, page 1184 } if you please. We are not offering some to keep them from offering the others. We are not putting upon them the burden of offering the others, but we don't intend, if we can help it, for them to put the burden upon us of reading a whole lot of stuff that we know is not material. We don't mean to cut out reading something that is in their favor. We wouldn't stop at reading interrogatories just because the answer didn't suit us. But we certainly don't intend, unless we are compelled to do so, to burden the jury on our part by reading a lot of immaterial answers. That is about what they want us to do.

Now let us come back to the statute. When Judge Carr rendered that decision—and I have examined the statute in the revised Code of 1919, for I have all those old codes in my library at home—the statute is exactly as Judge Carr says it is here. Here is what he says about the statute in concluding his opinion:

"And if one side introduces it at all, the other may insist on the whole being read, in order that a judgment may be formed upon its entire credit and effect. But though the whole must be read, it does not necessarily follow that it must be wholly admitted as true, or wholly rejected as false * * *."

That isn't the part that I read where he discusses that statute.

The Court: Excuse me just a minute, Mr. page 1185 } Allen.

(Off the record.)

Mr. Allen: If Your Honor please, Judge Carr, who wrote the main opinion in the case of *Fant v. Miller*, in 17 Gratt. 187, was evidently influenced considerably by the particular phraseology of the statute as it existed at that time. You will notice that the only thing in the statute on the subject as the statute exists today is this:

"Answers to such interrogatories may be used as evidence at the trial of the cause, in the same manner and with the same effect as if obtained upon a bill of discovery."

The language in the statute when that case was decided, *Fant v. Miller*, was to this effect:

"And to the same purpose and extent, and upon the same conditions in all respects as if they had been procured upon a bill in chancery for discovery, but no further or otherwise."

Judge Carr in his opinion said that these are "words as remarkable for their solicitous and impressive clearness as I have ever seen."

There are no such words in the statute now at all.

Mr. Mullen: Mr. Allen, you spoke of Judge Carr in *Fant v. Miller*. You meant *McFarland v. Hunter*, didn't you?

Mr. Allen: Yes, I meant *McFarland v. Hunter*.

Fant v. Miller didn't involve statutory interrogatories. All that *Fant v. Miller* involved was the effect of the answer to a pure bill in chancery when that answer was used in an action at law as evidence.

In the case of *McFarland v. Hunter*, Judge Carr states himself what the question was that was involved in the case, and he says this, and I am quoting now:

"The only point of importance in this cause arises upon exceptions taken to the opinion of the Court declaring that the answers of the plaintiff to the interrogatories of the defendant, so far as they were responsive, were conclusive evidence, not to be contradicted or disproved by any evidence, parol or written."

I repeat—and there can't be any doubt on earth about it if you will examine the cases carefully—that no Virginia case has ever decided nor has there ever been involved in any Virginia case the precise question of whether the plaintiff had to read to the jury all of any interrogatories that he introduced in evidence. I doubt even if the Court would hold that he had to introduce them all under the statutes as they exist now, because the old rule arose, Your Honor, by virtue of the fact that the answer was obtained in a proceeding which was separate and distinct entirely from the proceeding at law which was being tried, and the answer was taken out of the other proceeding, the equity proceeding, one answer, a connected answer, and filed as evidence in the law action. The answer was the same as the man speaking, testifying. If you are going to take any part of an answer like that responsive to a bill in equity, and file it in the action at law, then the whole answer must go in. Some of the cases even doubt whether you have to read it all, but we will concede for the sake of argument, take a short document like that obtained in another case, not a part of the proceeding, that you have to read it all.

The statute has come along and provide for these statutory interrogatories which are filed in the proceeding that is already pending at law to be used in that proceeding. So it is a part of the same proceeding, and by analogy of reasoning it ought to be used in the same sense that an answer in equity is used which is a part of that proceeding.

Replying to Colonel Harris over there about the several different sets, there are 16 separate and distinct sets or series of interrogatories in this case. The only long ones are the first four. I believe they filed interrogatories first. At least the interrogatories in this case numbered one are the interrogatories which they propounded to us. Then interrogatories 2, 3, 4, and so on, are interrogatories we propounded to them. Our interrogatories go up through 16. Some of those interrogatories contain as few as three questions, some of them as few as four, some of them 7 or 8, but the only real long ones are 2, 3, and 4.

Certain it is that the plaintiff would have a right to introduce and read to the jury all of any of those short sets if he saw fit to do so. They were sued out at different times. I believe some of them were sued out—according to the dates, some of them bear the same date, but they are separate and distinct interrogatories, propounding questions on separate and distinct subjects, and some of those short interrogatories came about in this way: Your Honor ruled that certain questions didn't have to be answered un-

less they were reframed. Then separate and distinct interrogatories were prepared reframing those interrogatories, and they were answered as reframed. They are short, only three or four. So I say that certainly common sense and reasoning supports the view that we have a right to introduce and read to the jury, if we see fit, all of those short sets of interrogatories. When it comes to the long ones, I think we have a right and in this day of modernization of rules of pleading and practice I don't think the Court would take a step backward 100 years and require you even to introduce interrogatories that the plaintiff thinks are not material evidence. But conceding that we would introduce them all, any that we don't read that they want to read, as Mr. Wigmore says, they can read them. For all practical purposes we should not spend a day or a half day here arguing and discussing as to who shall get in the witness chair and read the interrogatories. I don't know of any rule by which a court could require me or Mr. Moore or Mr. Robertson here to get in the chair and read all day long when it is for their benefit, when they are insisting upon its being done. Let one of them get in the chair and do some reading.

Mr. Mullen: We are not insisting. The law is insisting.

Mr. Allen: I differ with you on the law.

That is about all I have to say, and Mr. Robertson would like to express himself here.

Mr. Robertson: Judge, I will have to be very brief on what I have to say.

I have studied this thing just as well as I know how, and it seems to me it adds up to this: Up to this time the Court has not ruled finally on anything. It has expressly reserved all final rulings in this trial until after the pattern of the case was set, and the Court I think has said time and again "I can then tell better what is relevant and what is irrelevant and whether or not these interrogatories should be answered." So I think that the entire thing right now is wide open for the Court to rule anyway it wants, to throw all the interrogatories out if it wants to.

At the bottom of page 2 of Mr. Moore's memorandum, it says: "It is further provided in Section 8-321 that interrogatories shall be answered 'when the court in which the case is * * * is satisfied that the interrogatories are relevant.'"

It seems to me, Your Honor, if we offer them all in, all sets—I don't care anything about the sets and I don't care anything about who reads them. I can read them. I seem to have more staying power than anybody here physically. I am weak in other respects. If we offer them all in then it be-

comes the duty of the Court, in my opinion, even if counsel on either side didn't ask for it, to determine which answers to interrogatories are relevant. I think it is just as much the duty of the Court as it is the duty of counsel to keep irrelevant matter away from the jury and out of the trial.

Suppose the Court decides 50 questions are relevant, and suppose that all 50 of them are just perfectly ruinous to this plaintiff, but I called for them and I introduced them, then I think the Court can say, "All right, you called for them and you introduced them, you have to read them, I don't care whether it is fatal to your case."

In other words, we don't for one minute argue here that all we are going to read to the jury or all that must be read to the jury is just what is helpful to us. If we offer them in and the Court determines that they are relevant, it doesn't make any difference in whose favor, then they must all be read to the jury. If the plaintiff gets any help page 1191 } from it, well and good. If the plaintiff gets any hurt from it, that is just too bad. If the defendants get any help from them, they are entitled to it under the rules of law. As far as I am concerned, it doesn't make any difference to me, I am perfectly willing to introduce all 16, and all I am arguing for, I say that I think it is the duty of the Court to determine which of those answers are relevant and then to say those relevant answers must be read to the jury, it doesn't make any difference who they help or who they hurt. I don't think you would do any injustice to the plaintiff if you said "You are offering them now, and you read them all. Everything that is relevant, you read it. I don't care whether it helps you or hurts you, you put them in. I have determined they are relevant, now you get on the stand and read them."

Mr. Moore: There is one point I would like to show the Court, that in the pre-trial conference of November 28, Mr. Mullen has this to say about Virginia statutes requiring interrogatories to be relevant. On page 35 he said, quoting:

"No—laid down the general principle that you can not order such production of papers for the general effort to find something which they can not point out and the Virginia statute says when the Court is satisfied that exhibits page 1192 } are relevant—that is the point, in the cases they have cited in the memorandum they heretofore filed in every one of those cases it is said it must be shown that the evidence called for is material."

Mr. Mullen: That is for the purpose of requiring them to answer the interrogatories, and the statute expressly so

states. The statute we are acting under here is an entirely different section.

Mr. Robertson: I promised I wouldn't say tweedle-dum and tweedle-dee any more, and I am not going to say it.

Mr. Allen: May I ask one question, Mr. Mullen, if you don't mind. Do you contend, if we called for, propound an interrogatory that is relevant and you make an utterly immaterial answer, that we are compelled to accept it and read it to the jury?

Mr. Mullen: That you read the whole interrogatory, exactly what the case says. It says that the party to whom it is propounded may answer against your interest and the answer may be entirely irrelevant.

Mr. Robertson: No. If it is relevant, if it crucifies us, we have got to read it.

Mr. Allen: But if it is immaterial. I am asking you, if it is immaterial.

The Court: Can the plaintiff now say that these questions which they propounded to the defendants are irrelevant?

Mr. Robertson: Yes, because it so turns out page 1193 } the way the case has developed. For instance, I can show you—I won't stop to turn to them—I can show you a whole sequence of them where they said the questions didn't make sense.

Mr. Moore: We asked what is local No. 778A, and so on, and their answer to those is a string of them, "There is no such union"; "there is no such committee"; "there was no such office." Those certainly can't be relevant.

Mr. Mullen: If Your Honor please, we answered directly and responsively. There is not an argument in any of those interrogatories. Theirs is filled with arguments on their side when we addressed interrogatories to them. They fought here day after day that they were relevant and we should be required to answer because they were relevant to get material evidence for them. Now they are coming in here and trying to say that their own questions are not relevant and shouldn't be used. I have never heard of such a thing.

Mr. Robertson: We are not saying the questions are not relevant. We say the answers are not relevant the way the case is set up now.

Mr. Mullen: "... the whole of which is to be read as the testimony of a witness, including not only admissions against the interest of the respondent, but all assertions in his favor, subject, however, to be credited or discredited * * *"

Mr. Allen: That is right. We have no page 1194 } quarrel with that.

Mr. Mullen: Mr. Allen says it is not decided

in Virginia. There is no distinction between interrogatories and bills of discovery in view of the statute that makes interrogatories evidence in the same manner and to the same extent as bills of discovery. It classes them the same. Those cases decide how the answer to a pure bill of discovery can be used in evidence and the words are interchangeable with "interrogatories" as much as the statute can make it so.

Colonel Harris: Judge, I would like to add this. They put us to enormous labor. We worked for weeks preparing answers to questions that they had used the Court's machinery to propound, and it is playing fast and loose with the Court for them to propound questions and keep a half dozen lawyers and four or five men looking up facts, and then come in and say "We will pick out the cherries in this pudding and we are not going to follow the rules of law."

Mr. Allen: Mr. Mullen, I would like to ask you one more question, too. You know, we called for a number of the issues of the Mine Workers Journal, and you filed a stack of them about that thick (indicating).

Mr. Mullen: Exactly what you called for.

Mr. Allen: Of course you know that they page 1195 } were called for for particular articles in them.

Following out your principle you would insist that we read cover to cover everything that is in every issue of the journal, would you?

Mr. Mullen: I am leaving that matter entirely to the Court. They are part of the interrogatories.

Mr. Lowden: Suppose this were a case involving how old somebody was and you called for the family Bible as one of the methods of proving age and on the first page the man's age was shown. Do you mean to say the Court would require us to read the Bible to the jury?

Mr. Mullen: It was called for a special purpose designated in the cause, and You have a different proposition.

The Court: Gentlemen, I have listened atten- page 1196 } tively to the arguments, the very able arguments by counsel for both sides today on this question. I have also considered the matter somewhat before hearing argument today.

I don't think that the Plaintiff can be required to introduce all of the interrogatories, that is, 3, 4, 5, and 6. I think that it can introduce any one or all. Then when it comes to reading the interrogatories, I am of the opinion that the Plaintiff may read any or all interrogatories which the Court finally rules relevant. All other interrogatories and answers which are not read by Plaintiff's counsel may be read by counsel for the Defendants.

I don't think that counsel for the Plaintiff can come in Court today and say that interrogatories which were propounded to the Defendants are not relevant.

Does that sufficiently answer the question?

Mr. Moore: May we raise the objection that they are not responsive and as to the surplus matter in some of the answers?

The Court: That brings up the question that was in my mind about answers not being responsive to the Plaintiff's interrogatories. If the answers are not responsive, I don't think the Court should permit such questions and answers to be read.

Mr. Robertson: Judge, may I ask you a question now to see if I have in mind what the Court has said? The Court is going to determine what questions and answers the Court thinks are relevant. After the Court does that, the Plaintiff may read such of those as it wants to, and the Defendant may read such as it wants to?

The Court: You may attempt to read those that you want to read. These gentlemen may object to them, and the Court may rule then that you may not read such questions and answers, but you cannot object that they are irrelevant, because you asked for them.

Mr. Robertson: All right.

Mr. Mullen: If we sit still and say nothing, he has to read everything there?

The Court: No. They have to read a complete question and a complete answer in the interrogatories, but they don't have to read every question and every answer. You gentlemen may read them, Mr. Mullen.

Mr. Robertson: My purpose in suggesting this conference this afternoon, Your Honor, was that I thought we would tremendously expedite and simplify the matter if we went through it here this afternoon and the Court ruled this afternoon what it considers relevant and irrelevant.

The Court: I think it would be well to do that. It would save considerable time.

Mr. Robertson: As far as I am concerned, I page 1198 } am very anxious to reduce the argument to a minimum. We have argued them before. It is largely qualified by the way the evidence has developed, and I would hope it wouldn't take so long an argument as it has taken heretofore.

Colonel Harris: Will you note our exception before we proceed to something else?

The Court: Certainly.

Colonel Harris: We separately and severally except to that part of the ruling of the Court which holds that as to a particular defendant, if there are four sets of interrogatories to that defendant, like sets 1, 2, 3, and 4, that the Plaintiff can pick out any one set the Plaintiff wishes and not be concerned about the others; in other words that he can introduce any one of the four or part of any one of the four and ignore the other sets.

Mr. Robertson: We are perfectly willing to read everything the Court says is relevant.

Mr. Mullen: Wait a minute. We want to get our exception to this. I think this is a very important question and a serious one.

Colonel Harris: We reserve an exception to that ruling of the Court for the reason that interrogatories are a unity, and the statement made a little while ago by Mr. Allen that set No. 2 may be a re-framing of question No. 118 in the first set. If it is re-framing 118, 118 is part of the page 1199 } first set and the re-framing is a part of the first set, and they are one. It relates back, so there is no way, in our opinion, to separate them.

Mr. Robertson: If Your Honor please, we don't want to separate them.

The Court: I believe you are right in that respect, Colonel Harris. If another set is a revision of a particular set, I think that set should be read, that they should be read together.

Mr. Robertson: We will offer them all.

The Court: That is a part of the original set.

Colonel Harris: I am not through noting my exceptions here.

We also except to the ruling of the Court that the Plaintiff can pick out any question and the answer thereto from a set of interrogatories and read it to the jury and leave out of the Plaintiff's task the reading to the jury of any and all other questions and answers in the interrogatory.

Our basis for the exception is not only the argument made, but that it places upon the Defendants an unfair burden before the jury. In this instance the Plaintiff has taken eight days to put on his evidence. Then he gets up, and on something that the Plaintiff himself has done, he reaches out and says, "I will take three questions and take ten minutes, and then I will make it look to this tired and weary page 1200 } jury that the Defendant is consuming all of this time." I don't think it was ever contemplated by the law that the Defendant should be placed to that burden.

In the case that Mr. Allen read he said the defendant may

insist that it all be read. It didn't say the defendant may then read those not read. If he insists on their being read, he insists on the other side reading them. So, we except to that ruling which allows them to pick out one interrogatory or more, or such interrogatories as they please, and read those and the answers to them.

In other words, any ruling contray to the cases cited, that they must read them all, is, in our opinion, placing a burden on the Defendants which the law does not place, and we want to except to each one of those rulings.

The Court: But it is understood the Court has amended its ruling to require the reading of any subsequent interrogatories which relate to the set of interrogatories which have been presented and introduced.

Mr. Mullen: I am not certain yet that I understand exactly what the Court has ruled.

Mr. Allen: I think it is clear.

Mr. Robertson: Judge, I can simplify the matter to this extent. We are perfectly willing right now to offer all the interrogatories, and then the Court can rule that they all go in as a unit, subject to the ruling the Court has made, and the Court can determine now which ones are relevant all the way through the whole set.

Mr. Mullen: You are not shortening what I had to say. What I want to know is this: If the Court does go through and say that certain of them are not pertinent, say that fifty of them are not relevant and fifty are relevant, they have to read those fifty relevant ones, all or none of those fifty?

The Court: I understood that you were going to ask that certain ones be read by the Plaintiff. Then counsel for the Defendant will have an opportunity to object.

Mr. Robertson: Yes, sir.

The Court: And the Court may rule one way or the other.

Mr. Mullen: That is the relevancy of the particular question. I am raising the question that we argued here this afternoon, whether they have to read all of those in the interrogation that the Court says are relevant.

The Court: No, I didn't rule that they had to read them all, but that they could read any portion of them. They cannot read any that the Court rules are not relevant.

Mr. Mullen: I want to make this objection, then: We object to the ruling that if the Plaintiff introduces any of the interrogatories, the interrogatory of any individual defendant, the Plaintiff can read only the portion that it sees fit to read and not the entire interrogatory.

Mr. Robertson: You mean the entire set of interrogatories. Of course we are going to read the complete answer to an interrogatory.

Mr. Mullen: That the Plaintiff does not have to read the entire interrogatory and answer, but can read a portion of it.

The Court: That is true.

Mr. Mullen: We note an exception to that.

Colonel Harris: May I make an inquiry?

The Court: Certainly.

Colonel Harris: I understood Your Honor to state a while ago that it did not lie in the mouth of Plaintiff's counsel, who has propounded interrogatories, now to come in and say that those interrogatories are not relevant.

The Court: That was the Court's ruling.

Mr. Mullen: Suppose no party objects to any of them as being irrelevant.

Mr. Robertson: Then I think the duty is on the Court, and I think the Court has the right to call for the aid of counsel if it wants it.

Mr. Allen: I think we are probably using the term "relevant" improperly. We are using the terms "relevancy" and "materiality" as being synonymous, and they are not at all.

I rather agree with the Court that, so far as the page 1203 } question is concerned, if we asked it we can't come in and say that our own question is irrelevant. The answer is an entirely different thing.

Mr. Robertson: What we mean is whether it is admissible in evidence.

Mr. Allen: That is right, whether the answer is.

Mr. Robertson: Yes.

Mr. Mullen: Do you mean to say that if the answer is directly responsive to the question, you can then say the answer is irrelevant?

Mr. Allen: I don't say that.

Mr. Mullen: That is what you said.

Mr. Allen: The Judge has already ruled, and there is no use to discuss it any more, but when you go back to the object of bills of discovery and the object of interrogatories, it is for the purpose of discovery. A man is never required to introduce everything that is discovered.

The Court: It seems to the Court it would be most unreasonable to require to be read all these journals. It would take three days to read them, and the chances are that there is not much in them that is material or relevant.

Mr. Allen: One whole journal with ten or fifteen pages probably has one paragraph that long (indicating) which is relevant, and the rest has nothing to do with the case.

Mr. Robertson: As Mr. Mullen said here be-
page 1204 } fore, and I have read enough of them before to
know, if those journals wouldn't inflame the jury
I don't know what would.

Mr. Mullen: I don't know, those journals might be treated
as exhibits with the answers on a different basis.

The Court: I understand these gentlemen are introducing
all the interrogatories.

Mr. Robertson: That is right.

Colonel Harris: Will Your Honor give us time to confer
before we proceed to take up the interrogatories?

The Court: Certainly.

(Counsel withdrew for separate conference.)

Mr. Robertson: We could save useless work tomorrow by
getting on there tomorrow and reading what we think is rele-
vant, and the Court could rule on them as they came up. Then
let them read whatever they want, and the Court rule on them
as they came up.

The Court: Do you gentlemen have any observations?

Mr. Mullen: We are not going to make any request that
you read some particular part on our account. We simply
say that you have to read the whole. We don't know what
you propose to do. We don't know that we can take any part
in what you propose to do without risking and waiving our
objection.

Mr. Robertson: I understand the ruling of
page 1205 } the Court to be that we will come forward, that
we have now offered all of the interrogatories
which we addressed to the Defendants, and tomorrow morn-
ing we will be prepared to read such of the relevant ones as
we think necessary to read, and the Court will rule whether
we can read them or not. Then it will be up to the Defend-
ants to proceed as they deem proper.

The Court: Your plan would be to start reading the in-
terrogatories, and then these gentlemen may object if they
care to.

Mr. Robertson: Yes.

The Court: Do you gentlemen care to make any observa-
tions on that?

Mr. Mullen: I don't know that there is anything we can
say. We made our objection. We made our objection to the
interrogatories in the beginning, and we were required to an-
swer. I don't think we can be put in the position of object-
ing to every one of the questions before the jury. I don't
think we can be put in that position before the jury.

Mr. Robertson: We would be perfectly willing for you to make a continuing objection now to the procedure that is going to be followed tomorrow. We haven't objected to your making continuing objections before about everything else in the case.

Mr. Mullen: We object to every question unless you read them all.

page 1206 } Mr. Robertson: I take it if we adopt any such captious course as that, the Court could direct them to have a continuing objection.

Mr. Mullen: There is nothing captious about that. We feel that we have got to do what then is necessary to protect the objection and exceptions we have taken on this question. I think it is a very important question, and I think it is a very serious question. We don't want to do anything that can possibly be construed as waiving that objection.

The Court: The Court understands your position, Mr. Mullen.

Mr. Allen: We accept what you do with good graces, without any criticism of you whatsoever.

The Court: The only thought that occurs to me at the moment is, if you want to press any specific objection to any of these questions and answers that will be read tomorrow, if you would rather meet ahead of time and go over them and object to them, the Court of course will rule one way or the other. Of we can proceed, let counsel start reading, and you could interpose a continuing objection to all of it. The thought occurred to me if we reached a question and answer the Court may rule that it should not be asked or answered.

Colonel Harris: I thought the question of page 1207 } relevancy of the questions had been ruled against them, that all the questions are relevant.

The Court: As far as you are concerned, as far as your reading them is concerned. They can't object to your reading all the balance. Did you gentlemen understand the Court's ruling in that respect?

Colonel Harris: If I may ask in your presence, I think it would be better to wait until the morning than to do anything here, and when they offer if you will be advised as to whether we shall object to each one or make the continuing objection.

The Court: In other words, you reserve your right when they read the question to object and give your reasons and the Court will rule right then and there on the bench.

Mr. Mullen: I suppose that without waiving the objections here made to the ruling of the Court that they are not required to read them all, we could then also when they do

read them, object to any specific questions that they do read.

The Court: Yes.

Mr. Mullen: I am concerned about doing nothing to impair in any degree our objection.

The Court: In the event the Court of Appeals holds that my ruling is proper, the thought occurred to me that you still have an objection to the question and answer and page 1208 } and the Court may rule in your favor if you give your reasons therefor.

Colonel Harris: Of course I would rather have two shots with a rifle than to have just one.

The Court: That is true.

Colonel Harris: I am not from Kentucky.

The Court: We will adjourn then until tomorrow morning at ten o'clock with the understanding that counsel for the Plaintiff will start reading, and if you gentlemen care at that time to make any objection to any of the questions and answers read, the Court will be happy to hear you.

Colonel Harris: Or to the general course of procedure.

The Court: Exactly.

Mr. Mullen: We do not have to repeat the objection we have made here this afternoon?

The Court: That is my understanding.

Mr. Mullen: But we have a right to object to the individual question and hold that objection and exception.

The Court: I don't see why that wouldn't hold good, do you, gentlemen?

Mr. Robertson: No, sir.

The Court: I think it would hold good.

If you gentlemen read all the questions and answers then everything will be cured.

Colonel Harris: I am afraid it would.

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Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on February 1, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Colonel Crampton Harris, Counsel for the Defendants.

Also Present: Robert N. Pollard, Jr.

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PROCEEDINGS.

(Roll call of the jury.)

Mr. Robertson: If Your Honor please, before the trial of this case began, the Plaintiff propounded certain questions to all three Defendants in the form of interrogatories, and there are answers here from the Defendants to those interrogatories. We offer all of the interrogatories in evidence now.

Then I think in order to show the relationship between the three defendants it will be necessary for me to read quite a number of them to the jury. It is going to be tedious. I think it will take several hours. I am sorry, but I think it is necessary. I now offer in evidence—

Colonel Harris: We desire to interpose an objection. He has offered all of them, and I think at this time we should object, if the Court pleases.

We object to the introduction of the interrogatories in that manner, also on the additional ground that it is not the proper and legal way to introduce interrogatories, and on the ground that under the laws and practice of the State of Virginia all the interrogatories and all the answers thereto must be read to the jury by the party who seeks to introduce them in evidence.

Mr. Robertson: The Court has already ruled on that in Chambers. I assume he is doing that for the record.

The Court: For the record. The objection is page 1212 } overruled.

Colonel Harris: We reserve an exception to the rulings of the Court.

Now I want an opportunity as he offers any particular interrogatory to state our objection, and after I have stated it once we will pursue the method suggested by Your Honor or having a continuing one to save time.

The Court: Very well.

Mr. Robertson: The Plaintiff offers in evidence interrogatories addressed to the Defendant United Construction Workers affiliated with the United Mine Workers of America, which were received and filed by the Clerk of this Court on August

25, 1950, and ask that they be marked Plaintiff's Exhibit No. 58, sub 2.

Colonel Harris: We repeat the same objection we just made to Your Honor, if the Court pleases.

The Court: Same ruling.

Colonel Harris: We note an exception.

Mr. Robertson: If Your Honor please, this will take a few minutes but I think we will save time in the end.

(Interrogatories referred to marked Plaintiff's Exhibit 58-2 and received in evidence.)

Mr. Robertson: Those interrogatories are designated Interrogatories (2).

page 1213 } The Plaintiff offers in evidence Interrogatories (3) addressed to the Defendant District 50 United Mine Workers of America, which were received and filed by the Clerk of this Court on August 29, 1950, and ask that those interrogatories be marked Plaintiff's Exhibit 58-3.

Colonel Harris: Each Defendant separately and the Defendants jointly object to that, if the Court pleases, and assign again the same grounds that we have detailed to you.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

(Interrogatories referred to marked Plaintiff's Exhibit 58-3 and received in evidence.)

Mr. Robertson: The Plaintiff offers in evidence Interrogatories No. (4), addressed to the Defendant United Mine Workers of America, received and filed by the Clerk of this Court on September 13, 1950, and ask that they be marked Plaintiff's Exhibit No. 58-4.

Colonel Harris: The Defendants separately and severally and jointly re-interpose the same objections that we re-interposed when he first offered one of those.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

(Interrogatories referred to marked Plaintiff's Exhibit 58-4 and received in evidence.)

page 1214 } Mr. Robertson: The Plaintiff offers in evidence further interrogatories (5) addressed to the United Construction Workers, affiliated with the United Mine Workers of America, received and filed by the Clerk

of this Court on October 2, 1950, and ask that they be marked Plaintiff's Exhibit 58-5.

Colonel Harris: We object to that, if the Court pleases, and repeat and reinterpose the grounds of objection that we interposed a few minutes ago when he offered this first bunch of interrogatories.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(Interrogatories referred to were marked Plaintiff's Exhibit 58-5 and received in evidence.)

Mr. Robertson: The Plaintiff offers in evidence further interrogatories (6) addressed to the Defendant District 50, United Mine Workers of America, which were received and filed by the Clerk of this Court on October 2, 1950, and ask that those interrogatories be marked Plaintiff's Exhibit 58-6.

Colonel Harris: The Defendants severally and jointly object to the introduction of the interrogatories just offered and assign and interpose all the grounds of objection that we have just interposed to the other question, and on the additional ground that interrogatories cannot be page 1215 } offered as an exhibit.

Mr. Robertson: We offer them in evidence, Your Honor, and also as an exhibit. We offer them both ways, either or both, jointly and separately.

Colonel Harris: We repeat our objections, if the Court please.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

(Interrogatories referred to marked Plaintiff's Exhibit 58-6 and received in evidence.)

page 1216 } Mr. Robertson: The Plaintiff offers in evidence further Interrogatories (7) addressed to the Defendant United Mine Workers of America, which were received and filed by the Clerk of this Court on October 2, 1950, and ask that those further interrogatories be marked Plaintiff's Exhibit No. 58-7.

Colonel Harris: May Defendants have the same objection that we have been interposing?

The Court: Yes. The Court rules the same.

Colonel Harris: And an exception.

The Court: Very well.

(The interrogatories referred to were marked Plaintiff's Exhibit No. 58-7 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence further Interrogatories (8) addressed to the Defendant United Construction Workers, Affiliated with the United Mine Workers of America, which were received and filed by the Clerk of this Court on October 2, 1950, and ask that they be marked Plaintiff's Exhibit 58-8.

Colonel Harris: May we have the same objection?

The Court: The same ruling.

Colonel Harris: Note an exception, please.

(The interrogatories referred to were marked Plaintiff's Exhibit 58-8 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence further Interrogatories (9) addressed to the Defendant District 50 United Mine Workers of America, which were received page 1217 } and filed by the Clerk of this Court on October 2, 1950, and ask that they be marked Plaintiff's Exhibit No. 58-9.

Colonel Harris: May the Defendants have all the objections that we have been interposing?

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The interrogatories referred to were marked Plaintiff's Exhibit 58-9 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence further Interrogatories (10) addressed to the Defendant United Mine Workers of America, which were received and filed by the Clerk of this Court on October 2, 1950, and ask that they be marked Plaintiff's Exhibit 58-10.

Colonel Harris: May we have the same objection, if the Court pleases?

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The interrogatories referred to were marked Plaintiff's Exhibit 58-10 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence further Interrogatories (11) addressed to the Defendant United Construction Workers, affiliated with United Mine Workers of America, which were received and filed by the Clerk of this Court on October 12, 1950, and ask that they be marked Plaintiff's Exhibit 58-11.

page 1218 } Colonel Harris: The same objection, if the Court pleases.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

(The interrogatories referred to were marked Plaintiff's Exhibit 58-11 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence further Interrogatories (12) addressed to the Defendant District 50, United Mine Workers of America, which were received and filed by the Clerk of this Court on October 12, 1950, and ask that they be marked Plaintiff's Exhibit No. 58-12.

Colonel Harris: The same objection.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The interrogatories referred to were marked Plaintiff's Exhibit 58-12 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence further Interrogatories (13) addressed to the Defendant United Mine Workers of America, which were received and filed by the Clerk of this Court on October 12, 1950, and ask that they be marked Plaintiff's Exhibit 58-13.

Colonel Harris: The same objection, if the Court please.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

page 1219 } (The interrogatories referred to were marked Plaintiff's Exhibit 58-13 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence further Interrogatories (14) addressed to the Defendant United Construction Workers, affiliated with the United Mine Workers of America, which were received and filed by the Clerk of this Court on November 2, 1950, and ask that they be marked Plaintiff's Exhibit No. 58-14.

Colonel Harris: The same objection.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The interrogatories referred to were marked Plaintiff's Exhibit 58-14 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence further Interrogatories (15) addressed to the Defendant District 50, United

Mine Workers of America, which were received and filed by the Clerk of this Court on November 2, 1950, and ask that they be marked Plaintiff's Exhibit 58-15.

Colonel Harris: The same objection, if the Court please.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The interrogatories referred to were marked Plaintiff's Exhibit 58-15 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence page 1220 } further Interrogatories (16) addressed to the Defendant United Mine Workers of America, which were received and filed by the Clerk of this Court on November 2, 1950, and ask that they be marked Plaintiff's Exhibit 58-16.

Colonel Harris: The same objection, if the Court please.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The interrogatories referred to were marked Plaintiff's Exhibit 58-16 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence Answer of United Construction Workers, affiliated with United Mine Workers of America, to Summons of the Plaintiff to Answer Interrogatories, which were received and filed by the Clerk of this Court on November 14, 1950, and with that Answer the Plaintiff offers also all accompany's exhibits, and asks that the Answer, with all the accompanying exhibits, be marked Plaintiff's Exhibit No. 59-1.

Colonel Harris: The same objection, if the Court please; and the additional objection that he cannot offer the Answer without offering the Interrogatory also.

Mr. Robertson: We have offered all the interrogatories that were ever asked in this case.

The Court: All the interrogatories have been offered, as the Court understands. The objection is over-page 1221 } ruled.

Colonel Harris: We reserve an exception.

(The documents referred to were marked Plaintiff's Exhibit No. 59-1 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence Answer of District 50, United Mine Workers of America, to Summons of the Plaintiff to Answer Interrogatories, with accompanying

exhibits, which were received and filed by the Clerk of this Court on November 14, 1950, and asks that this Answer, with the accompanying exhibits, be marked Plaintiff's Exhibit No. 59-2.

Colonel Harris: The same objection.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The documents referred to were marked Plaintiff's Exhibit No. 59-2 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence Answer of United Mine Workers of America to Summons of the Plaintiff to Answer Interrogatories—the numbers herein refer to the numbers of the Interrogatories—which were received with accompanying exhibits, which were received and filed by the Clerk of this Court on November 14, 1950, and ask that it be marked Plaintiff's Exhibit No. 59-3.

Colonel Harris: The same objection.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

page 1222 } (The documents referred to were marked
Plaintiff's Exhibit No. 59-3 and received in evidence.)

Mr. Robertson: My attention is called to the fact that Plaintiff's Exhibit 59-1 has bound up with it a paper entitled, "Further Interrogatories Propounded to United Construction Workers, affiliated with United Mine Workers of America, on October 2, 1950." I offer that also in evidence, and ask that it be marked Plaintiff's Exhibit 59-1-A.

Colonel Harris: The same objection.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The document referred to was marked Plaintiff's Exhibit No. 59-1-A and received in evidence.)

Mr. Robertson: Plaintiff's Exhibit No. 59-2 has bound with it a paper entitled, "Further Interrogatories Propounded to District 50 on October 2, 1950," and I offer that paper in evidence and ask that it be marked Plaintiff's Exhibit No. 59-2-A.

Colonel Harris: The same objection.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The document referred to was marked Plaintiff's Exhibit No. 59-2-A and received in evidence.)

Mr. Robertson: Plaintiff's Exhibit No. 59-3 has bound with it a paper entitled, "Further Interrogatories propounded to the International Union on October 2, 1950." Plaintiff offers that paper in evidence, and asks that it be marked Plaintiff's Exhibit No. 59-3-A.

Colonel Harris: Same objection.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

(The document referred to was marked Plaintiff's Exhibit No. 59-3-A and received in evidence.)

Mr. Robertson: Plaintiff's Exhibit No. 59-1 has bound with it a paper entitled, "Further Interrogatories Propounded to United Construction Workers, affiliated with United Mine Workers of America, on October 12, 1950," and Plaintiff offers that paper in evidence and asks that it be marked Plaintiff's Exhibit No. 59-1-B.

Colonel Harris: Same objection.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

(The document referred to was marked Plaintiff's Exhibit No. 59-1-B and received in evidence.)

Mr. Robertson: Plaintiff's Exhibit 59-2 has bound with it a paper entitled, "Further Interrogatories Propounded to District 50 on October 12, 1950." Plaintiff offers that paper in evidence and asks that it be marked Plaintiff's Exhibit 59-2-B

Colonel Harris: Same objection.
page 1224 } The Court: Same ruling.

Colonel Harris: We reserve an exception.

(The document referred to was marked Plaintiff's Exhibit No. 59-2-B and received in evidence.)

Mr. Robertson: Plaintiff's Exhibit 59-3 has bound with it a paper entitled "Further Interrogatories Pronounded to the International Union on October 12, 1950." Plaintiff offers that paper in evidence and asks that it be marked Plaintiff's Exhibit No. 59-3-B.

Colonel Harris: The same objection, if the Court pleases.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

(The document referred to was marked Plaintiff's Exhibit No. 59-3-B and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence an answer entitled, "Answer of United Construction Workers, affiliated with United Mine Workers of America, to Summons of the Plaintiff to Answer Interrogatories," which were received and filed by the Clerk of this Court on December 18, 1950, and asks that that Answer, with accompanying exhibits, be marked Plaintiff's Exhibit No. 59-4.

Colonel Harris: The same objection.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

page 1225 } (The documents referred to were marked
Plaintiff's Exhibit No. 59-4 and received in evidence.)

page 1226 } Mr. Robertson: Plaintiff offers in evidence as
an exhibit papers entitled "Answer of District
50, United Mine Workers of America to summons of the Plaintiff to answer interrogatories which was received and filed by the Clerk of this Court on December 18, 1950, and asks that it be marked Plaintiff's Exhibit No. 59-5.

Colonel Harris: Same objection.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

(Documents referred to were marked Plaintiff's Exhibit 59-5 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence paper entitled "Answer of United Mine Workers of America to summons of the Plaintiff to answer Interrogatories," the numbers herein refer to the numbers of the interrogatories, which was received and filed by the Clerk of this Court on December 18, 1950, and ask that it be marked Plaintiff's Exhibit No. 59-6.

Colonel Harris: Same objection.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

(Documents referred to were marked Plaintiff's Exhibit 59-6 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence a paper entitled "Answer of United Mine Workers of America to page 1227 { question No. 125, Interrogatories No. 4, addressed to the Defendant United Mine Workers of America," with accompanying exhibit, which was received and filed by the Clerk of this Court on January 11, 1951, and ask that it be marked Plaintiff's Exhibit No. 59-7.

Colonel Harris: The same objection.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

(Documents referred to were marked Plaintiff's Exhibit 5917 and received in evidence.)

Mr. Robertson: I want to be sure that we get everything in with the interrogatories and answers, Your Honor.

Plaintiff offers in evidence a booklet entitled "Constitution of the International Union, United Mine Workers of America, Washington, D. C., adopted at Cincinnati, Ohio, on September 19, 1944," with the notation in pen and ink: "UMWA, Ex., answering Int. No. 2," and ask that that be marked.

Mr. Mullen: You already introduced all three of those as your first exhibit.

Mr. Robertson: I don't think it is necessary to mark it any more. I think it would just confuse it.

The Court: My recollection is that all of them were introduced.

Mr. Robertson: I did that, Your Honor, but they have offered them in evidence and I am afraid if I page 1228 { don't get them in now they will claim that we haven't complied with the law because we didn't put in everything with the interrogatories and answers. It will take only a minute. There are not very many of them here.

The Court: All right.

Colonel Harris: We want to add the additional objection that that needlessly encumbers the record since he has already introduced them.

Mr. Robertson: The Plaintiff offers in evidence another copy of the same—

The Court: The objection is overruled and I allow an exception.

Mr. Robertson: The Plaintiff offers in evidence another copy of the same pamphlet, likewise endorsed in pen and ink, "UMW, Ex., answering Int. No. 2."

Colonel Harris: The same objection just made.

The Court: Same Ruling.

Colonel Harris: We reserve an exception.

Mr. Robertson: Plaintiff offers in evidence a paper entitled "United Mine Workers of America exhibit answering Interrogatory No. 85."

Colonel Harris: The same objection just made.

The Court: Same ruling.

Mr. Robertson: Received and filed by the Clerk of this Court on November 14, 1950, and ask that that page 1229 } paper be marked Plaintiff's Exhibit No. 60.

The Court: Same ruling.

Colonel Harris: We reserve an exception to your Honor's ruling.

(Document referred to was marked Plaintiff's Exhibit 60 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence a paper entitled "UMWA Exhibit answering Interrogatory No. 7, with 11 accompanying sheets attached together, and ask that they all collectively be marked Plaintiff's Exhibit No. 61.

Colonel Harris: The same objection.

The Court: The same ruling.

Colonel Harris: We reserve an exception.

Mr. Mullen: It is understood when they actually try to offer that in evidence we have a right to object further to the competency of it at that time.

The Court: That is my understanding.

Mr. Robertson: Yes, but I am offering them all in evidence right now.

(Documents referred to were marked Plaintiff's Exhibit 61 and received in evidence.)

Mr. Allen: You overlooked the exhibits consisting of the Mine Workers Journals that were filed with some of the answers to the interrogatories filed by the Defendants.

Mr. Robertson: Yes. Plaintiff offers in evidence page 1230 } denuce the entire contents of an envelope endorsed

Laburnum Construction Corporation against United Construction Workers, et. al., UMW of America, UMW journal filed with answer to interrogatories of October 12, 1950, Interrogatory No. 6, which were received and filed by the clerk of this Court on November 14, 1950, and asks that the contents of this envelope, in the envelope, be marked on the envelope Plaintiff's Exhibit No. 62.

Colonel Harris: We interpose the same objection, and the additional objection that the contents in the envelope are not sufficiently designated and identified.

The Court: Mr. Robertson, will you identify the contents of the envelope?

Mr. Allen: By the date or volume number.

Mr. Robertson: The United Mine Workers Journal, Volume 52, No. 5, March 1, 1941.

United Mine Workers Journal, Volume 52, No. 7, April, 1941.

United Mine Workers Journal, Volume 52, No. 14, July 15, 1941.

United Mine Workers Journal, Volume 52, No. 15, August 1, 1941.

United Mine Workers Journal, Volume 52, No. 16, August 15, 1941.

United Mine Workers Journal, Volume 52, No. 20, October 15, 1941.

United Mine Workers Journal, Volume 53, No. 6, March 15, 1942.

United Mine Workers Journal, Volume 53, No. 8, April 15, 1942.

United Mine Workers Journal, Volume 53, No. 9, May 1, 1942.

United Mine Workers Journal, Volume 53, No. 10, May 15, 1942.

United Mine Workers Journal, Volume 53, No. 12, June 15, 1942.

United Mine Workers Journal, Volume 53, No. 16, August 15, 1942.

United Mine Workers Journal, Volume 53, No. 20, October 15, 1942.

United Mine Workers Journal, Volume 53, No. 21, November 1, 1942.

United Mine Workers Journal, Volume 53, No. 23, December 1, 1942.

United Mine Workers Journal, Volume 54, No. 6, March 15, 1943.

United Mine Workers Journal, Volume 55, No. 10, May 15, 1944.

United Mine Workers Journal, Volume 55, No. 18, September 15, 1944.

page 1232 } United Mine Workers Journal, Volume 55, No. 19, October 1, 1944.

United Mine Workers Journal, Volume 56, No. 10, May 15, 1945.

United Mine Workers Journal, Volume 57, No. 4, February 15, 1946.

United Mine Workers Journal, Volume 57, No. 5, March 1, 1946.

United Mine Workers Journal, Volume 57, No. 10, October 15, 1946.

United Mine Workers Journal, Volume 57, No. 21, November 1, 1946.

United Mine Workers Journal, Volume 57, No. 22, November 15, 1946.

United Mine Workers Journal, Volume 58, No. 10, May 15, 1947.

United Mine Workers Journal, Volume 58, No. 12, June 15, 1947.

United Mine Workers Journal, Volume 58, No. 21, November 1, 1947.

United Mine Workers Journal, Volume 59, No. 1, January 1, 1948.

United Mine Workers Journal, Volume 59, No. 10, May 15, 1948.

United Mine Workers Journal, Volume 59, page 1233 } No. 15, August 1, 1948.

United Mine Workers Journal, Volume 59, No. 17, September 1, 1948.

United Mine Workers Journal, Volume 59, No. 20, October 15, 1948.

United Mine Workers Journal, Volume 59, No. 21, November 1, 1948.

United Mine Workers Journal, Volume 60, No. 1, Jan. 1, 1949.

United Mine Workers Journal, Volume 61, No. 12, June 15, 1950.

I ask that all those be marked Plaintiff's Exhibit with appropriate numbers.

Colonel Harris: The same objection.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

Mr. Robertson: If I have overlooked introducing any interrogatories or answers or exhibits, I offer them all now.

Colonel Harris: Same objection.

Mr. Robertson: If there are any counsel who know of any I call them now to speak up.

Mr. Mullen: I make the further objection that a news-

paper as a whole is not proper evidence to be introduced, that any specific article to be introduced should be designated so that it may be determined whether it is the proper item to go before the jury. The general news in a newspaper, there may be arguments about the laws in Congress and so forth, and are not proper evidence in this case, and they are not material in the case.

The Court: What is your answer?

Mr. Allen: If Your Honor please, we expect to read certain designated portions of those journals, and we will ask Your Honor to instruct the jury that only so much as we read from those journals will be evidence in this case. Of course we don't want the whole of any journal.

Mr. Mullen: Your Honor, unless they read them beforehand to the jury as evidence, we would have no chance of knowing what it is proposed to read and no chance to object to them.

Mr. Allen: We are going to show you before it is read, Mr. Mullen, exactly what we propose to read.

Mr. Mullen: That is what I want to know.

(Documents referred to were marked Plaintiff's Exhibit 62, sub 1-36 inclusive and received in evidence.)

The Court: Gentlemen, let's take a five-minute recess.

(Brief recess.)

page 1235 } Mr. Allen: If Your Honor please, we are now reading questions from Interrogatories (2) filed by the Plaintiff against the United Construction Workers affiliated with the United Mine Workers of America, hereinafter sometimes called the United Construction Workers, filed in the Clerk's office on the 25th day of August, 1950:

"Question 5. Furnish a copy of the certificate of affiliation granted by the United Mine Workers of America to United Construction Workers, showing when such certificate of affiliation was granted to United Construction Workers."

The Court: Colonel Harris?

Colonel Harris: We object to Plaintiff's counsel singling out an interrogatory and reading it, as being contrary to the laws and practice of the State of Virginia; and on the additional ground that the Plaintiff's counsel themselves propounded all the interrogatories, and thereby put the Defend-

ants and their counsel to enormous labor, and as a result Plaintiff's counsel cannot now say some of the questions asked by them or some of the answers should not be read to the jury; and on the further ground that this method now sought to be used by Plaintiff amounts to a withdrawal of those interrogatories he does not read and the answers thereto which he does not read, and is not permitted under the laws and practice of Virginia, which requires that all interrogatories and all answers be read to the jury; and on the further page 1236 } ground that such a method now sought to be employed by the Plaintiff unduly emphasizes a part of the interrogatories and thereby implies that the unread interrogatories are unimportant and not worthy of consideration by the jury, and the procedure sought to be used would unduly burden and embarrass the Defendants and make it appear that they were the ones taking up the time of the jury on the interrogatories if we followed any method suggested of ourselves reading to the jury the interrogatories, it being the position of the Defendants that the Plaintiff having put the questions, and having put all the questions, must read each question and each answer; and on the additional ground that the method sought to be used takes an answer out of its context, which is contrary to the principle and spirit underlying the propounding of interrogatories and the reading of their answers to the jury.

Mr. Robertson: Are you through?

Colonial Harris: I am through with the objection, but I will have something else to say when the Court rules.

Mr. Robertson: If Your Honor please, everything that Mr. Harris has said is in effect what was said yesterday when Your Honor in chambers overruled his objection, and therefore I think the matter has already been settled in chambers. I assume that he is saying it over here in the presence of the jury to protect the record. I am going to ask the

page 1237 } Court to explain to the jury the ruling the Court has made under which, as Mr. Harris knows, the Court has ruled that anybody can offer any of these things in evidence, and the Court will rule that the Plaintiff cannot object to the relevancy of any question, that we have waived all our objections to any questions or answers, and that the Defendants can read anything they want, subject to a ruling by the Court whether it is relevant or not, and they can get anything before this jury out of those interrogatories and answers that the Court rules is relevant. I am going to ask the Court to explain its ruling to the jury.

Colonel Harris: If the Court please, this is not entirely a

repetition of the objections made yesterday. I have sought to put down separately and severally each legal objection that my mind was able and my vision was able to perceive. It is not a mere repetition for the record, although of course we want to keep the record straight.

The Court: The objection is overruled, Mr. Harris.

Colonel Harris: We reserve an exception.

May I ask of the Court that in order to save time and to speed up the trial, we be given the entire objection that I have just stated in the presence of the jury, to each interrogatory that counsel for the Plaintiff single out and read, and each answer thereto that they single out and read, and that it be a continuing objection which applies to each and page 1238 } every one, and that we be given an exception to each and every one, without having to get up and state it and take up so much time hereafter.

Mr. Allen: That is satisfactory to us.

The Court: It is understood, then, that there is a continuing objection and exception.

Colonel Harris: Thank you, Judge.

Mr. Robertson: Repeat the question, please, Mr. Allen.

Mr. Allen: Will you read it so as to obviate the necessity of Mr. Harris objecting again?

(The question was read by the reporter as follows:)

"Question 5. Furnish a copy of the certificate of affiliation granted by the United Mine Workers of America to United Construction Workers, showing when such certificate of affiliation was granted to United Construction Workers."

Mr. Robertson: "The only certificate of affiliation is the United Construction Workers charter, Exhibit 1, attached hereto."

If Your Honor please, I am going to ask that we pass the original exhibit to the jury, and that I read a copy of it.

Exhibit 1 reads as follows:

"Established January 25, 1890, International Union, United Mine Workers of America, doth grant this page 1239 } charter to A. D. Lewis, Chairman-President, Washington, D. C., Gardner Wales, Comptroller-Treasurer, Washington, D. C., United Construction Workers Division, and their successors in office, to constitute a Local Union to be known as UCWD, District No. 50, for the

purpose of effecting thorough organization of the workers in this industry, and said Local Union being duly organized is hereby authorized and empowered to admit to membership any person in accordance with the provisions of the Constitution of the United Mine Workers of America, and to enact a Code of By-Laws for the government of said Local Union, provided, that the said Local Union shall in all cases conform to the Constitution of the United Mine Workers of America.

"In witness whereof we have hereunto attached our signatures and caused the seal of the United Mine Workers of America to be affixed.

"Done at Washington, D. C., this 6th day of June, 1942.
(SEAL)

(Signed) JOHN L. LEWIS, President

(Signed) THOMAS KENNEDY, Secretary

"United Construction Workers Exhibit 1."

* * * * *

page 1240 } Mr. Allen: "Question 6. What was the address of the General Offices of United Construction Workers in Washington, D. C., between the dates October 28, 1948, and August 4, 1949, and what has been the address of its General Offices in Washington, D. C., since August 4, 1949?"

Mr. Robertson: "900—15th Street, N. W. Washington, D. C., during all the times inquired about."

Mr. Mullen: "Washington 5, D. C."

Mr. Robertson: I left that out. I beg your pardon. "Washington 5, D. C."

Mr. Allen: "Question 7. Was United Construction Workers operated as a District or Sub-District or Branch or Subordinate Branch of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and if so, during what period or periods; and has it been so operated at any time since August 4, 1949, and if so, during what period or periods?"

Mr. Robertson: "United Construction Workers has at all times inquired about operated as a Division of District 50, United Mine Workers of America."

Mr. Allen: "Question 8. Was United Construction Workers operated as a District or Sub-District or Branch or Subordinate Branch of District 50 at any time between the dates October 28, 1948, and August 4, 1949, and if so, during

what period or periods; and has it been so
page 1241 } operated at any time since August 4, 1949, and if
so, during what period or periods?"

Mr. Robertson: "United Construction Workers has at all times inquired about operated as a Division of District 50, United Mine Workers of America."

Mr. Allen: "Question No. 15 as reframed and answered as reframed: "Who are the persons who served as Directors of Region 58 of United Construction Workers between the dates October 28, 1948, and August 4, 1949, and what other offices has each Director of Region 58 held between the dates October 28, 1948, and August 4, 1949? When and by whom was each Director appointed a Regional Director or other officer? During what period or periods between the dates October 28, 1948, and August 4, 1949, did each Director of Region 58 serve in that office or in any other office, and what were the locations of their respective offices?"

Mr. Robertson: "Answering the question as modified by direction of the Court, this Defendant says:

"During all the times inquired about, Mr. David Hunter has been Acting Regional Director or Regional Director of Region 58, United Construction Workers, and was appointed by Mr. A. D. Lewis, Director of United Construction Workers."

Mr. Allen: "Question 18. What area was included in Region 58 of United Construction Workers between the dates
October 28, 1948, and August 4, 1949, and what
page 1242 } area has been included in Region 58 of United
Construction Workers since August 4, 1949?"

Mr. Robertson: "Several counties, all adjoining, and situated in the States of Kentucky, Virginia, and West Virginia, one of which counties is Breathitt County, Kentucky."

Mr. Allen: "Question 19. What was the street address in Pikeville, Kentucky, of the Regional Office of Region 58 of United Construction Workers between the dates October 28, 1948, and August 4, 1949, and what has been the street address in Pikeville, Kentucky, of said Regional Office since August 4, 1949?"

Mr. Robertson: "Seward Building, Main Street, Pikeville, Kentucky, at all times inquired about."

Mr. Allen: "Question 20. What was the Post Office Box Number in Pikeville, Kentucky, of the Regional Office of Region 58 of United Construction Workers between the dates October 28, 1948, and August 4, 1949, and what has been the Post Office Box Number in Pikeville, Kentucky, of said Regional Office since August 4, 1949?"

Mr. Robertson: "District 50 and the United Construction Workers, as such, do not have a Post Office Box in Pikeville, Kentucky. Post Office Box 50 has been the Post Office Box of District 50, United Mine Workers of America, and Thomas Raney, International Board member, United Mine Workers of

America, for some 17 years, and because of the crowded condition in the Post Office and it being unable to provide a Post Office Box for District 50 and the United Construction Workers, the Post Office employees have been placing the mail of District 50 and the United Construction Workers in Post Office Box 50."

Mr. Allen: "Question 21. When and upon whose authority was the Regional Office of Region 58 of United Construction Workers organized or set up?"

Mr. Robertson: "Upon the authority of the Director of the United Construction Workers, the Regional Office of Region 58 was set up October 25, 1948, with David Hunter designated by the Director of United Construction Workers as Acting Regional Director. Effective June 16, 1949, David Hunter's status was changed from that of Acting Regional Director to Regional Director of Region 58 of United Construction Workers."

Mr. Allen: "Question 25. Furnish a copy of all credentials issued by United Construction Workers or by its National Directors to David Hunter for proper identification and for use by him between the dates October 28, 1948, and August 4, 1949, and furnish a copy of all credentials issued by United Construction Workers or by its National Director to David Hunter for proper identification and for use by him after August 4, 1949."

Mr. Robertson: "Attached hereto and marked page 1244 } Exhibit 3 is the form of credentials issued by United Construction Workers to David Hunter and to all other field staff personnel during all the periods of time inquired about. The attached Exhibit 3 is marked 'void' to prevent any possible improper use of the card."

If Your Honor please, I want the jury to see that. It is on the original. I can find it. I don't have a copy of this, so I would like to read it and then pass it around.

"United Construction Workers, Affiliated with United Mine Workers of America.

"To whom it may concern:

"This is to certify that.....is hereby duly authorized and legally commissioned to act as representative

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of the United Construction Workers, and entitles bearer to do and perform all lawful acts pertaining to his office and to exercise all the authority conferred by the United Construction Workers. This commission to remain in full force untilunless sooner revoked by the Directors.

.....Director

“D-23-19.”

Mr. Allen: “Question 27. What written report page 1245 } ports on work performed on matters of policy or organizational activities did David Hunter, as an employee or representative of United Construction Workers, submit to United Construction Workers or to its national director between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports.”

Mr. Robertson: “Copies of available reports submitted by Regional Director, David Hunter, are attached hereto and marked Exhibit 4, with sub-numbers 4-1, 4-2, and so forth.”

(Discussion off the record.)

The Court: Are you reading the complete answer to that question from this exhibit?

Mr. Robertson: No, sir. I was just going to read the report for that one day. I think that is all that is relevant.

The Court: I suspect you had better read the whole report.

Mr. Robertson: All right, sir.

“United Construction Workers, affiliated”—

The Court: Unless you gentlemen waive the objection to it.

Colonel Harris: As I understand it, Judge, we have a continuing objection to this method as to each one.

page 1246 } Mr. Robertson: I think we had better read it all, Your Honor.

The Court: The Court's ruling was that for any question you had to read the complete answer.

Mr. Robertson: If the Court thought it was relevant. That is all right. It will just take a little longer.

Mr. Mullen: The question is whether all those reports are a complete answer.

Mr. Robertson: The Court already has ruled on that. The Court has ruled that I could read what relevant parts I

wanted to and that they could read the other parts if they wanted to.

Mr. Allen: May it please Your Honor, may I say here that we called for the reports in a certain period. They furnished what they say are all available reports. I think at least Mr. Robertson should be allowed to state the dates of the various reports.

Mr. Robertson: I am going to do that, Mr. Allen. What I am reading now, in accordance with the Court's direction, is all of Exhibit 4-1.

Mr. Allen: That is right.

The Court: All right.

Mr. Robertson: "United Construction Workers affiliated with United Mine Workers of America. January 23, 1950.

Mr. A. D. Lewis, Chairman of Organizing Committee, District 50, UMW, and UCW, United Mine Workers, Building, Washington 5, D. C. Weekly report for three weeks ending January 7, 14, 21, 1950.

"Monday and Tuesday, January 2 and 3, 1950. In conference with the arbitration case of Mr. H. Price, member of UCW Local Union No. 778-A. Before we received a decision from the umpire the City cancelled Mr. Garfield Seward's contract. The entire force of 7 employees were laid off. Under the circumstances it seems the city employees will have to be reorganized.

"Wednesday, January 4, 1950. Assisted representative Hutchinson with contract negotiations and grievances in Jenkins, Kentucky.

"Thursday, January 5, 1950. Worked in and from the Pikeville office.

"Friday, January 6, 1950. Met the management of the Maybilt Construction Company in Paintsville, Kentucky relative to checking off dues and initiation fees from our members.

"Saturday, January 7, 1950"—

Mr. Mullen: What report are you reading? I thought you were going to read the report that contained March 18.

The Court: January 12.

Mr. Robertson: January 12.

Mr. Mullen: I thought he was going to read March 23.

Mr. Robertson: I am reading Exhibit 4-1.

page 1248 } The Court: The letter is dated January 23, 1950.

Mr. Robertson: Yes, sir.

Mr. Mullen: Let me confer with my associate a few minutes.

The Court: All right.

(Brief recess.)

Mr. Mullen: Your Honor, our hands are tied by the course this matter has taken to waive the objection to the interrogatories, the manner in which they are introduced. There is nothing we can say. Our hands are tied.

Mr. Robertson: "Saturday, January 7"—

The Court: Mr. Robertson, this exhibit is a part of an answer, is it not, to the question?

Mr. Robertson: Yes, sir.

The Court: We are going to run into this situation later with other exhibits.

Mr. Robertson: If Your Honor please, you will note that that the exhibit is broken down into a number of sub-divisions, 4-1, 4-2, and so forth. I am not going to refer to very many of them. It will not be a great burden to read each one of those exhibits entirely, 4-1 and 4-whatever else I refer to.

The Court: All right.

Mr. Robertson: When I come to the part that page 1249 } I desire to read may I make a comment at that point? Well, I won't do that, Your Honor. I think the jury can follow me if they catch it.

Mr. Allen: Which one are you reading now?

Mr. Robertson: I am reading Exhibit 4-1. I have come to Saturday, January 7, 1950.

Mr. Allen: Wait a minute. Mine is dated January 23.

Mr. Mullen: So is mine.

Mr. Robertson: I am down on that page.

Mr. Allen: I see now. That is right. The date of the letter is the 23rd.

Mr. Robertson: Mr. Moore is there to show you. Show him, Mr. Moore.

"Saturday, January 7, 1950. In Williamson, West Virginia, assisting Representative Brown in straightening out various local unions' monthly reports.

"Monday, January 9, 1950, assisting Representative Robinson, Hazard, Kentucky. It seems to be difficult to get new organizational workers started in this area. However, there is a \$700,000 school building to be built. Work will start some time in February. I have hopes of getting a contract with this contractor when the job begins.

"Tuesday, January 10, 1950. Assisting Representative Brown, Williamson, West Virginia.

page 1250 } "Wednesday, January 11, 1950. Representative Hutchinson and I met with Mr. Charles Cheek, of the Cheek Construction Company, Frankfort, Kentucky. Five of his operators do not want to go along with the UCW. We agreed that if these operators did not go along, Mr. Cheek would lay them off. Mr. Cheek also talked about a state-wide contract and asked for a five-year contract. I agreed to sign him up for as many years as he wished, with certain provisions. He would either write, call or be in in the very near future. At present we have a contract with Mr. Cheek for Region 58, Local Union No. 778-A.

"Thursday, January 12, 1950. I had an appointment in Frankfort, Kentucky, with Mr. John A. Keck, Highway Commissioner, relative to increasing the labor rates from 80 cents to \$1.00 within this area. Mr. Tom Raney, International Board Member, was in Lexington, Kentucky, and went with me to meet Mr. Keck. Due to illness Mr. Keck was home. Therefore we met with the Deputy Commissioner. The Deputy Commissioner felt sure the labor rates would be increased to some extent. Up to date not one of the contractors have filed a complaint against the rates that we have been able to squeeze out of them above the bid-in rate for this area. He also stated that the Highway Department allowed the contractors above the 80-cent bid-in rate set by the Department when work was to be done within this region. I am
page 1251 } expecting to hear from Commissioner Keck when he returns to his office.

"Friday and Saturday, January 13, 14, 1950. Representative Foster called me, 10 a. m. January 13, this being the first I had heard about him being indicted under the Reed-Mann Act together with four members of UCW Local Union No. 612. When I arrived in Logan, Mr. Mel Tricola, UMWA representative had stood the bond for all five to appear for trial January 26. The local union had retained attorney Flannery and attorney Lockhart to represent them. I have informed attorney Cowherd in regard to this matter. Attorney Flannery told me that he did not consider the charge serious. Representative Foster may have become a little lax, as I had discussed with him the possibilities of moving him out of the Logan area the first of the month. I also discovered the AFL had been trying to do a little raiding of our construction locals in this area. However, I do not feel they will gain very much in this attempt.

"Monday, Tuesday and Wednesday, January 16, 17, 18 1950. In bed sick.

"Thursday, January 19, 1950. Met with the Mayor and City Council of Jenkins, Kentucky as the city employees who had not received their wages for several months went on strike. The Council agreed to pay them one-half of what the city owed them by Saturday, January 21. This page 1252 } was agreeable, and the employees returned to work.

"Friday, January 20, 1950. Met with the management of the Eagle Five and Ten Cent Store, Jenkins, Kentucky. The management would not recognize the UCW, so the employees came out on strike. We could not reach an agreement, therefore the store is still closed.

"Saturday, January 21, 1950, worked in and from the office. Also attended the funeral of Representative William O. Hart's father-in-law at Neon, Kentucky.

"Organizational: Representative Robinson serviced local unions and checked on several construction jobs. Representative Hart serviced local unions. Representative Hutchinson gained UCW recognition for the employees of the Coca-Cola Bottling Company, Pikeville, Kentucky. Representative Brown serviced Local unions.

"Faternally yours, David Hunter, Acting Director, Region 58."

If Your Honor please, I am turning to Exhibit 4-6. That is dated March 1, 1950. That is a little longer, but there are not very many of them.

The Court: Do you propose to read it all?

Mr. Robertson: I don't want to read it all, Your Honor; the only part I think is relevant is the final paragraph of it right over his signature. I think that is all that is relevant.

The Court: All right. Go ahead and read the page 1253 } final paragraph.

Mr. Robertson: Just to identify it, A. D. Lewis, Director, A. B. Allen, Comptroller, United Construction Workers affiliated with United Mine Workers of America, address reply to Pikeville Regional office, P. O. Box 50, Pikeville, Kentucky, Phone 1310, March 1, 1950. Mr. A. D. Lewis, Chairman of Organizing Committee District 50, UMWA, and UCW, United Mine Workers Building, Washington 5, D. C.

The final paragraph reads:

"I am endeavoring to bring all construction jobs within Region 58 under contract with the UCW. There are several contracts being let by the State Highway Department to contractors who are not already under contract within this region. These jobs will be starting in the near future, and I antici-

pate a minimum amount of trouble in signing up these contractors. Fraternally yours, David Hunter, Acting Director, Region 58."

The Court: All right.

Mr. Robertson: If Your Honor please, I come to Exhibit 4-8.

Mr. Mullen: If Your Honor please, may we take further exception that these reports being read relate to periods after the suit was brought and relate to subsequent happenings.

page 1254 } The Court: That is one thing I wanted to talk to you gentlemen about. Let's recess and go in Chambers for a few minutes.

(The following proceedings were had in Chambers.)

Mr. Robertson: Judge, I would like to read the only part of that report that I think is relevant. It is the report for Saturday—

The Court: Getting back to the objection. You are going to take that objection up?

Mr. Robertson: I was going to meet it right now.

The Court: All right, go ahead.

Mr. Robertson: The report is for Saturday, March 18, 1950. Bear in mind that it is from David Hunter, acting regional director, Region 58, to A. D. Lewis, the boss of both the United Construction Workers and District 50. He says this: "Checking the four construction jobs we have under contract and also the road into Breathitt County, Kentucky, which Representative Hart informed me was impassable. I found the road in fair condition and had no difficulty in getting through.

"I have reasons to believe representative Hart has lied on several occasions. Therefore, I wanted to know definitely if the road was passable or not. At times his actions show he resents taking orders and in order to not carry them out will make some excuse such as: the roads are
page 1255 } impassable.

"I have requested Representative Hart to be in this office Wednesday, 10 a. m., March 22 "

We think it is relevant for two purposes: One, as showing the man and the pattern to organize that entire Region 58 both before and after the occurrences in Breathitt County, that that was just one episode in the over-all master plan,

and also to show what the character of this man Hart is who led these men into the Breathitt County job site.

The Court: Mr. Allen, do you have anything to say?

Mr. Allen: If Your Honor please, the testimony is relevant in view of the issues that have been drawn here. What went on before and what went on afterwards shows the scheme or plan or program or policy as it has been referred to here. There are some other things which we will reach in these reports which they may object to particularly. For instance, there is one there in which I believe it was Hunter—Hunter or Hart, but I think it was Hunter—who in one of his reports said that if certain contractors didn't sign up with him he intended to close the job down. They are the kind of things that we think we are entitled to show, showing that from start to finish they are conforming to a pattern and a scheme to get all of the workers for these contractors in their organizations by any means they can, violence or otherwise. Furthermore, these notes show that page 1256 } Hart and Hunter and Raney and Robinson and one or two others that were representatives of the several unions, Raney being the Representative of the International Union, were all conferring together and going around together at different places in reference to this organizational work. The whole things shows exactly what we have got to meet here, that when Hart went there with this crowd of men he went there in accordance with a plan or scheme designed by his superisors and that he was ordered by his superiors to do it.

It is exactly the same principle that you have in criminal cases where intent is involved, where plan is involved, where scheme is involved. It is exactly the same principle that you have in slander cases where slanders both before and after are permitted in evidence, but with directions that you can't recover on those that took place after the beginning of the suit.

These reports are admissible for another reason. We don't care to read everything in them. If they want to read it or insist that we read it, that is all right. It is in evidence that these men made regular reports of everything they did every day. You will find some of these reports reporting incidents where they met with counsel for the unions. Mr. Pollard and Mr. Cowherd, and they interviewed witnesses and all that. We don't care about reading those except to show that they did make a daily memorandum and they re-
page 1257 } ported to headquarters in Washington not only what they had done but what they were going to do.

Mr. Robertson: We have eliminated anything about reading any conferences with lawyers.

Mr. Allen: We don't care to read any of that at all. But what I am coming to is this: We want to show that it was the custom or practice to make daily reports. Then we want to show that every report referring to this incident is missing, every one. When the time comes to ask for instructions and the time comes to argue to the jury, we want to be able to argue that we called for the reports for a period of almost a year prior to the beginning of this trouble, and then shortly after the beginning of this trouble, and there isn't a report there for months before the trouble began and there isn't a report there for several months after the trouble began. Under the authorities, that is evidence, not only a presumption. It doesn't give rise to a mere presumption, but it gives rise to evidence that those reports were made and that they had them. Mr. Bryan says he saw them in Mr. Hunter's possession.

We want to show the number of reports that were here, the dates, of them. We don't care about reading them all. Very few of them we will want to read. There is very little we will want to read from, but it is for the purpose and importance of showing that we called for all of the reports
page 1258 } and they didn't furnish, say, but 25 or 30, and the dates of those that they furnished, and show enough of them to show the detail that they went into as to what they reported.

Mr. Robertson: And to show also, Your Honor, that the reports that David Hunter made to the United Construction Workers and District 50 were identical. One was a carbon copy of the other.

Mr. Mullen: If Your Honor please, I think counsel have gone rather far afield. They are getting down to the question of presumptions. They had an answer filed with the reports that they were regularly destroyed every six months. There is no reason for accumulating these reports. If they were destroying the reports in order for them not to get them, don't you think we have destroyed these reports also?

What they are reading there gives no presumption.

What I was objecting to was that these reports relate to matters occurring long after this suit was brought, and that the mere fact that they refer to other cases and all doesn't make them evidence. Every union in this country is trying to organize all the workmen. All of them are trying to do it. There is nothing wrong about that. They keep talking about a pattern. They haven't shown any pattern any different from any other union. All unions when they cannot get

recognition or settlement, strike, and other people on the job
 are affected. We had that situation here on Grace
 page 1259 } Street a year or so ago where they couldn't
 complete a building. An A. F. of L. union, trying
 to organize common laborers not organized under the A. F.
 of L., struck and tied up everything else.

Their argument that they want to show that there is a motive to destroy and break up business merely by showing that in the organization of workers there have been strikes where recognition has been refused is entirely different from any question like in criminal law where you show motive. Yes, in libel where you have to show motive, and you libel the same person before and after, you can show it, but you can't show that they have libeled some third person. The motive question in the sense that it is used in the cases doesn't arise here. You can show other happenings. For example, if a man comes and pays me a debt with three notes and it later turns out that they are all forged, in that one transaction, in trying him for forgery, they can show that that series in that one particular transaction were all forged. They can show that one received was forged and another one was forged and the third one was forged. That is where you come to motive and showing intent.

By saying that the work was closed down at Wheelwright and showing the circumstances, they can't show that they were engaged in breaking up jobs all around. If that were brought in, that is a collateral matter, and we
 page 1260 } would have a right to introduce evidence to show what were the facts there, to show whether our people were liable. We would have a right to bring in 100 different cases where we organized and there was no strike, no violence or strike of any kind.

The Court would get into the trial of an endless number of cases.

In a case of this kind they don't show any plan or design. They have no plan to put anybody out of business. They don't want to put those people out of business. They are seeking to organize workers who are unorganized and to get them jobs.

I don't think that these reports that cover every kind of matter, which have nothing possibly to do with this case, are proper to be introduced or are relevant testimony.

Mr. Allen: Let me read you one page, if Your Honor please, from the most authoritative work I know put out by the American Law Institute. They call it restatement of the law. In addition to those 12 or 15 volumes, they have put out the American Law Institute's Model Code of Evidence,

and here is what that says in Rule 311. I am reading from page 196:

“Subject to Rule 306, evidence that a person committed a crime or civil wrong on a specified occasion is inadmissible as tending to prove that he committed a crime page 1261 } or civil wrong on another occasion if, but only if, the evidence is relevant solely as tending to prove his disposition to commit such a crime or civil wrong or to commit crimes or civil wrongs generally.

“Comment: The law is often assumed to be otherwise than as stated in this Rule. Nothing is more common than to find the unqualified assertion that if a party is charged with having committed a specified crime or civil wrong, no evidence of the commission by him of another crime or wrong is receivable against him. This is true where the series of inferences on which the relevance of the evidence depends is from the commission of the other wrong to a disposition to commit such a wrong or to commit crimes or torts generally, thence to the commission of the particular wrong. The cases are *lgion*, however, which admit such evidence when offered to prove motive, intent, preparation, plan or identity. A careful examination, of the pertinent cases in England and in the United States will reveal that the great majority of them reflect the doctrine expressed in this Rule.”

All the way through this case we have directed our attention to plan, policy, intent, scheme. This was Dixon testified that it was the policy—he used the very word—policy of the United Construction Workers to run people off their jobs, to raid them, as he called it.

He cited four instances in which they had page 1262 } actually executed that policy. And other witnesses have testified to the same extent.

I say that anything which tends to show this plan or policy, whether it happened before or after this incident, that is, if it is within a reasonable time of the incident, is relevant and material to prove the issues involved in this case.

The Court: I will overrule the motion and allow it for what it is worth.

Mr. Mullen: Note an exception.

page 1263 } (The following proceedings were had in open court:)

Mr. Robertson: If Your Honor please, in order to get the

context, I will have to read who it is to and who signs it, and they read the pertinent part.

The Court: Very well.

Mr. Robertson: "A. D. Lewis, Director, O. B. Allen, Comptroller, United Construction Workers, affiliated with United Mine Workers of America; Address reply to: Pikeville Regional Office, P. O. Box 50, Pikeville, Kentucky. Phone 1031.

" March 23, 1950

"Mr. A. D. Lewis,
Chairman of Organizing Committee,
District 50, UMWA and UCW,
United Mine Workers Building
Washington 5, D. C.

"Weekly Report for the two weeks
ending March 11-18, 1950.

"Friday, March 17, 1950. Worked in and from the Pikeville office.

"Saturday, March 18, 1950. Checking the four construction jobs we have under contract, and also the road into Breathitt County, Kentucky, which Representative Hart informed me was impassable. I found the road in fair condition, and had no difficulty in getting through. I have reasons to believe Representative Hart has lied on several occasions.

Therefore, I wanted to know definitely if the page 1264 } road was passable or not. At times his actions show he resents taking orders, and in order not to carry them out will make some excuse, such as: 'The roads are impassable.' I have requested Representative Hart to be in this office Wednesday, 10 a. m., March 22.

"Fraternally yours,

DAVID HUNTER,
Acting Directors,
Region 58."

If Your Honor please, I come to Exhibit 4-9:

"A. D. Lewis, Director
O. B. Allen, Comptroller,
United Construction Workers, affiliated
with United Mine Workers of America"

It is to Mr. A. D. Lewis. I won't read all that.

"Weekly Report for two weeks ending
March 25 and April 1, 1950.

"Saturday, March 25, 1950. In Hazard, Kentucky, with International Board Member Tom Raney. We met Mr. Ed Reynolds in charge of the Mine Workers office in Hazard. We explained to him the program I have worked out relative to organizing the unorganized in that area. He pledged his fullest cooperation in the future. We are not asking the Mine Workers to do our work for us. However, when we ask for a push here and there, we are not getting it. Mr. Raney is of the belief that Mr. Reynolds in the future will cooperate.

page 1265 }

Fraternally yours,

DAVID HUNTER,
Acting Director,
Region 58."

I come now to Exhibit 4-17, dated June 27, 1950:

"Mr. A. D. Lewis,
Chairman of Organizing Committee,
District 50, UMWA and UCW
United Mine Workers Building
Washington 5, D. C.

"Weekly Report for week ending
June 24, 1950.

"Friday, June 23, 1950. At the request of Mr. Tom Raney, I was in Lexington, Kentucky, for the purpose of meeting with President Sam Caddy, District 30, UMWA, to obtain the support from the Hazard, Kentucky, office in organizing a large construction job at Toner, Kentucky. However, Mr. Caddy was ill and could not attend. Also, Mr. Raney was late in arriving and had to leave early the next morning for Hiddlesboro, Kentucky.

Fraternally yours,

DAVID HUNTER,
Acting Director,
Region 58."

Mr. Allen, the next one is 32, Interrogatories (2), Question 32.

Mr. Allen: "Question 32. In what capacity or capacities was H. G. Robinson employed by United Construction Workers between the dates October 28, 1948, and August page 1266 } 4, 1949, and in what capacity or capacities has he been employed by United Construction Workers since August 4, 1949? For what period or periods was he employed in each capacity?"

Mr. Robertson: "During the periods of time inquired about, Mr. H. G. Robinson (true name Harvey J. Robinson) was employed by the Director of the United Construction Workers as a Field Representative and assigned to work in Region 58 of United Construction Workers."

Mr. Allen: "Question 33. Furnish a copy of all credentials issued by United Construction Workers or by its National Director to H. G. Robinson for proper identification and for use by him between the dates October 28, 1948, and August 4, 1949, and furnish a copy of all credentials issued by United Construction Workers or by its National Director to H. G. Robinson for proper identification and for use by him after August 4, 1949."

Mr. Robertson: "Mr. Robinson has been furnished credentials of the form set forth in Exhibit 3."

That is the one we showed Your Honor.

Mr. Allen: "Question 35. What written reports on work performed on matters of policy or on organizational activities did H. G. Robinson, as an employee or representative of United Construction Workers, submit to United Construction Workers or to its National Director between the dates October 28, 1948, and August 4, 1949, and also after page 1267 } August 4, 1949. Furnish a copy of all such reports."

Mr. Robertson: "Copies of written reports submitted by Mr. Harvey J. Robinson on work performed are attached hereto and marked Exhibit 5, with sub-numbers 5-1, 5-2, and so forth."

I refer to Exhibit 5-16, entitled "Field Representative's Weekly Report, Region No. 58; Organization, United Construction Workers. Weekly Report of Harvey J. Robinson, Representative, Address P. O. Box 23, Paintsville, Kentucky. Telephone No. 872-M. For the week ending October 14, 1950.

"Pikeville, Kentucky. Attended mass meeting District 30, United Mine Workers of America, concerning policy of national office and UCW District 50."

That was Sunday.

The following Saturday:

"Matewan, West Virginia; Attended regular meeting Mine Workers L. U. Williamson, West Virginia; attended regular meeting L. U. 787, Scot Nickels Bus Company."

The next one is 36.

Mr. Allen: "Question 36. In what capacity or capacities was Thomas Davis employed by United Construction Workers between the dates October 28, 1948, and August 4, 1949, and in what capacity or capacities has he been employed by United Construction Workers since August 4, 1949? For what period or periods was he employed in each capacity?"

page 1268 } Mr. Robertson: "During all the times inquired about, Mr. Thomas Davis was employed by the United Construction Workers by its Director, and assigned as Regional Director of Region 31 of the United Construction Workers and District 50 United Mine Workers of America, and was assigned also as Assistant to the Chairman of the Organizing Committee of District 50, United Mine Workers of America, and Assistant to the Director of the United Construction Workers."

Mr. Allen: "Question 37. Furnish a copy of all credentials issued by United Construction Workers or by its National Director to Thomas Davis for proper identification and for use by him between the dates October 28, 1948, and August 4, 1949. Furnish a copy of all credentials issued by United Construction Workers or by its National Director to Thomas Davis for proper identification and for use by him after August 4, 1949."

Mr. Robertson: "Mr. Davis has been furnished credentials of the form set forth in Exhibit 3."

Mr. Allen: "Question 44. Was Thomas Raney a member of the International Executive Board of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and if so, during what period or periods; and has he been a member of said International Executive Board at any time since August 4, 1949, and if so, during what period or periods?"

page 1269 } Mr. Robertson: "Mr. Thomas Raney is a duly constituted member of the International Execu-

tive Board, United Mine Workers of America, and has been at all times inquired about, but at no time during that period has Mr. Raney been employed by the United Construction Workers."

Mr. Allen: "Question 47. What was the location in Pikeville, Kentucky, of the office of Thomas Raney as an employee or representative of the United Construction Workers or District 50 or United Mine Workers of America, between the dates October 28, 1948, and August 4, 1949, and what has been the location in Pikeville, Kentucky, at said office since August 4, 1949?"

Mr. Robertson: "Mr. Raney has never been an employee or representative of the United Construction Workers. His address as International Board Member of the International Union is Seward Building, Pikeville, Kentucky."

Mr. Allen: "Question 48. What was the location in Pikeville, Kentucky, of the office of David Hunter as an employee or representative of the United Construction Workers or District 50 or United Mine Workers of America, between the dates October 28, 1948, and August 4, 1949, and what has been the location in Pikeville, Kentucky, of said office since August 4, 1949?"

Mr. Robertson: "Seward Building, Main Street, Pikeville, Kentucky."

page 1270 } Mr. Allen: "Question 56. When and upon whose authority did United Construction Workers Local Union 778-A decide to take strike action against the Plaintiff in connection with the Plaintiff's work in Breathitt County, Kentucky, and was the so-called strike against the Plaintiff which took place in Breathitt County, Kentucky, on July 26, 1949, sanctioned by the National Director of the United Construction Workers or his designated representative; and if so, when and by whom was such sanction given?"

Mr. Robertson: "No formal strike action was ever taken by Local Union 778-A, and consequently there was no occasion for nor was any request made to sanction any strike action."

Mr. Allen: "Question 57. Who were the members of United Construction Workers Local Union 778-A on July 14, 1949, and when was each of those persons initiated to membership in United Construction Workers; and what persons became members of said Local Union 778-A between the dates July 14, 1949, and August 4, 1949, and when was each of those persons initiated to membership in said union, said United Construction Workers?"

Mr. Robertson: "The records of membership were supposed to be kept and it is assumed that they were kept at the headquarters of Local Union 778-A. This Defendant has

written, requesting the information sought in page 1271 } this question, and same will be attached hereto and marked as Exhibit 7, if and when received."

Mr. Allen: "Question 58—"

Mr. Mullen: One minute, if Your Honor please. I don't think that is complete, because it was received later and filed.

Mr. Robertson: We are going to put it in when we get to it. We are taking it in chronological sequence.

The Court: Go ahead.

Mr. Allen: "Question 58. Did the rules of the United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provide that the organization known as United Construction Workers should be subject to the constitution of the International Union, that is, United Mine Workers of America, and if so, during what period or periods; and have said rules at any time since August 4, 1949, so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 59. Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provide that the administrative officers of United Construction Workers, operating under the certificate of affiliation granted by United Mine Workers of America, should be composed of a National Director who should have general supervision over the organizational, financial, legislative and internal affairs of the organization, and a Financial Comptroller who should keep the books and records and act as custodian of the funds and property of the National organization, and if so, during what period or periods; and have said rules at any time since August 4, 1949, so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 60. Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provide that the administrative officers of United Construction Workers should be subject to and conform with the constitution and policies of the International Union, that is, United Mine Workers of America, and if so, during what period or periods; and have said rules at any time since August 4, 1949, so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 61: Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provide that the administrative officers of the United Construction Workers page 1273 } should have authority to issue charters to groups of not less than 10 eligible members and upon receipt of a \$25.00 charter fee; and if so, during what period or periods; and have said rules at any time since August 4, 1949, so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

page 1274 } Mr. Allen: "Question 82: Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provide that the charters of local unions of United Construction Workers might be suspended or revoked by the administrative officers of United Construction Workers because of violations of or failure to comply with any of the rules and policies, or major objectives of United Construction Workers, and if so, during what period or periods and have said rules at any time since August 4, 1949, so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 63: Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provide that the National Director of United Construction Workers should have authority to designate a national representative to administer the affairs of any local union of the United Construction Workers where it should be found to be the best interests of the membership to do so, and if so, during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 84: Did the rules of page 1275 } United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provided that the National Director of United Construction Workers should be authorized to appoint regional directors who should have the supervision of local unions within the region assigned to them and who should report directly to said National Director on all matters of policy and or-

ganizational activities and who also should be charged with the duty, among other things, of supervising organizing activities within their region, and if so, during what period or periods, and have said rules at any time since August 4, 1949 so provided and if so during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 65: Did the rules of United Construction Workers at any time between dates October 28, 1948, and August 4, 1949, provide that regional directorships might be established or abolished at the discretion of the National Director of United Construction Workers, and if so during what period or periods, and have said rules at any time since August 4, 1949 so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 66: Did the rules of page 1276 { United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provide that the National Director of United Construction Workers should have authority to appoint representatives to assist and cooperate with one or more local union in organizing, negotiating wage agreements, and other union activities, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 67: Did the rules of United Construction Workers at any time between the dates October 28, 1948 and August 4, 1949, provide that the national director of United Construction Workers at his discretion might at any time assign a representative to act as local union representative for a local union, and that the local union should thereupon recognize the representative as the local union representative 'to carry out the duties as herein before set forth', that is, to assist in the organizing, negotiating and similar activities on behalf of the local union and if so, during what period or periods, and have said rules at any time since August 4, 1949 so provided and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

page 1277 { Mr. Allen: "Question 68: Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949 provide

that the local union should be recognized as having the initial local authority on all matters concerning strikes or grievances and that no strike action should be taken until it should be approved by a majority of the workers involved, but that no strike should take place without first obtaining sanction therefor in the National Director of United Construction Workers, or his designated representative, and if so during what period or periods, and have said rules at any time since August 4, 1949 so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 69: Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, provide that under the direction of the National Director of United Construction Workers there should be published at least twice monthly an official paper to be known as *The News*, and that this publication should reflect the activity and progress of organization throughout the nation, and should convey information about the program of United Mine Workers of America and other news and editorial matter having a bearing upon the economic and general welfare of the membership, and if so during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question No. 71: Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949 provide that all local unions should have the right to make rules or adopt procedures to govern themselves, provided that they should not be in conflict with the rules and policies of the organization, and provided that they should first be approved by the National Director of United Construction Workers, and if so, during what period or periods, and have said rules at any time since August 4, 1949 so provided and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 72: Did the rules of the United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949 provide that local unions should comply with all instructions that might be issued with regard to the use of forms and maintenance of financial and other records and interpretation of the rules made by the National Director of the United Construction Workers, and if so during

what period or periods, and have said rules at page 1279 } any time since August 4, 1949 so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 73: With respect to charges against and trials and appeals of officers and members of a local union, did the rules of the United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949 provide that the decision of the local union should be final unless loss of membership of the accused should be involved, in which event an appeal might be taken to the International Executive Board of the United Mine Workers of America within five days after the decision, and that pending such appeal the decision of the local union should be enforced unless temporarily stayed by the National Director of the United Construction Workers, or said National Executive Board, and if so during what period or periods, and have said rules at any time since August 4, 1949 so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 74: Did the rules of United Construction Workers at any time between the date October 28, 1948 and August 4, 1949 provide that they, said rules, should govern all local unions and representatives and page 1280 } employees of local unions and of the national organization, but that local unions might make rules or adopt procedures to govern themselves provided they should not be in conflict with the rules and policies of United Construction Workers, and if so, during what period or periods, and have said rules at any time since August 4, 1949 so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 75: Did the rules of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949 provide that the National Director of the United Construction Workers should have the authority to interpret said rules, and that he should render a decision on all points of law or grievance submitted to him by the local union and that his decision and interpretation should be final unless changed by the International Executive Board of the United Mine Workers of America, and if so during what period or periods, and have said rules at any time since August 4, 1949 so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 76: Did the rules of United Construction Workers at any time between the dates October 28, 1948 and August 4, 1949, provide that when the page 1281 } National Director of United Construction Workers should make a decision or order a local union to observe rulings and policies, and the local union should refuse to abide by the decision or to carry out the order, the local union should be subject to suspension or revocation of the charter, and if so during what period or periods, and have said rules at any time since August 4, 1949 so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen: "Question 77: Did the rules of United Construction Workers at any time during the period from October 28, 1948, to August 4, 1949 provide that all policies pertaining to the administration and government of the United Construction Workers should be determined by the National Director of the United Construction Workers and that his ruling should be binding unless changed by the International Executive Board of the United Mine Workers of America, and if so, during what period or periods, and have said rules at any time since August 4, 1949 so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, substantially at all times inquired about."

Mr. Allen, at 82, when you read the question about each person, let me read the answer to each person, please.

page 1282 } Mr. Allen: Yes.

"Question 82: Did United Construction Workers or its National Director at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, have the right to suspend or remove or to cause to be suspended or removed from office Thomas Rancy?"—

Mr. Robertson: "As to Thomas Rancy, no."

Mr. Mullen, on one of these there is a correction in here and I am not sure whether it was at this point or some other point.

Mr. Mullen: No, that was 83.

Mr. Allen: "Thomas Davis?"—

Mr. Robertson: "As to Thomas Davis, yes."

Mr. Allen: "David Hunter?"—

Mr. Robertson: "As to David Hunter, no."

Mr. Allen: "William O. Hart"—

Mr. Robertson: "As to William O. Hart, no."

Mr. Allen: "H. G. Robinson"—

Mr. Robertson: "As to Harvey J. Robinson, yes."

Go to A, B, C, D.

Mr. Allen: "(a) Who had such right?"

Mr. Robertson: "The director of United *Construction Construction Workers*."

Mr. Allen: "As to whom could such right have been exercised?"

Mr. Robertson: Answered.

page 1283 } Mr. Allen: "(c) During what period or periods could such right have been exercised?"

Mr. Robertson: "During all periods inquired about."

Mr. Allen: "(d) What cause or causes, if any, were necessary for the exercise of such right?"

Mr. Robertson: "No set rules to govern. It is a matter of administrative practice."

Mr. Allen: "Question 83"—

Mr. Mullen: 83 was the one that contained a typographical error and it was amended.

Mr. Robertson: You correct it when we get to it. Or if you will tell me which it is we can do it now.

Mr. Allen: Suppose you give us the correction.

The Court: Read it as corrected.

Mr. Allen: Do you have it as corrected, Mr. Mullen?

Mr. Mullen: I have it somewhere. Yes, I think there is one lying on my desk down in the office.

Mr. Robertson: We can correct it afterwards. Go ahead and read 83.

The Court: Do you have a corrected copy?

Mr. Mullen: There is one in the Court papers.

Here, I have it.

(Counsel conferring.)

Mr. Robertson: 83, Mr. Allen.

page 1284 } Mr. Allen: "Question 83: Did District 50 or its administrative officer at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, have the right to suspend or remove or cause to be suspended or removed from office the National Director of the United Construction Workers"—

Mr. Robertson: "As to the National Director, no."

Mr. Allen: "The National Comptroller of the United Construction Workers"—

Mr. Robertson: "As to the National Comptroller, no."

Mr. Allen: "Or Thomas Raney"—

Mr. Robertson: "As to Thomas Raney, no."

Mr. Allen: "Thomas Davis"—

Mr. Robertson: "As to Thomas Davis, no."

Mr. Allen: "David Hunter"—

Mr. Robertson: "As to David Hunter, yes."

Mr. Allen: "William O. Hart"—

Mr. Robertson: "As to William O. Hart, yes."

Mr. Allen: "H. G. Robinson"—

Mr. Robertson: "As to Harvey J. Robinson, no."

Mr. Allen: "(a) Who had such right?"

Mr. Robertson: "Chairman of the Organizing Committee of District 50, United Mine Workers of America."

Mr. Allen: "(b) As to whom could such right have been exercised?"

page 1285 } Mr. Robertson: Answered.

Mr. Allen: "(c) During what period or periods could such right have been exercised?"

Mr. Robertson: "During all periods of time inquired about."

Mr. Allen: "(d) What cause or causes if any were necessary for the exercise of such right?"

Mr. Robertson: "No set rules to govern. It is a matter of administrative practice."

Now we go to Interrogatories (3), Your Honor.

The Court: It is time for the luncheon recess. The Court will recess, Sheriff, until 2:15.

(Whereupon, at 12:50 o'clock p. m. the Court was recessed until 2:15 o'clock p. m. the same day.)

page 1286 } AFTERNOON SESSION.

2:15 p. m.

Mr. Allen: These are answers, if Your Honor please, to Interrogatories (3), propounded to District 50, United Mine Workers of America, hereinafter sometimes called District 50. We propose to read the interrogatories and answers as follows:

"Question 5," on page 2—

The Court: Let me find the questions, please.

(Discussion off the record.)

Mr. Allen: "Question 5. What was the address of the General Offices of District 50 in Washington, D. C., between the dates October 28, 1948, and August 4, 1949, and what has been the address of its General Offices in Washington, D. C., since August 4, 1949?"

Mr. Robertson: "900—15th Street, N. W., Washington 5, D. C., at all times inquired about."

Mr. Allen: "Question 6. Was District 50 operated as a District or sub-district or branch or subordinate branch of United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and if so, during what period or periods; and has it been so operated at any time since August 4, 1949, and if so, during what period or periods?"

Mr. Robertson: "District 50 is and was a District of United Mine Workers of America at all times inquired about."

Mr. Allen: "Question 14. (As reframed) page 1287 } Who are the persons who served as Directors of Region 58 of District 50 between October 28, 1948, and August 4, 1949, and what other offices has each Director of Region 58 held between the dates October 28, 1948, and August 4, 1949, and when and by whom was each such person appointed Regional Director or other officer? During what period or periods between the dates October 28, 1948, and August 4, 1949, did each serve as Regional Director or other officer, and what were the locations of their respective offices?"

Mr. Robertson: Answering the question as modified by orders of the Court, the Defendant says: "During all the time inquired about, Mr. David Hunter has been Acting Regional Director or Regional Director of Region 58, District 50, and was appointed by Mr. A. D. Lewis, Chairman of the Organizing Committee of District 50."

Mr. Allen: "Question 17. What area was included in Region 58 of District 50 between the dates October 28, 1948, and August 4, 1949, and what area has been included in Region 58 of District 50 since August 4, 1949?"

Mr. Robertson: "Several counties, all adjoining, and situated in the States of Kentucky, Virginia, and West Virginia, one of which counties is Breathitt County, Kentucky."

Mr. Allen: "Question 18. What was the street address in Pikeville, Kentucky, of Regional Office of Region 58 of Dis-

trict 50 between the dates October 28, 1948, and page 1288 } August 4, 1949, and what has been the street address in Pikeville, Kentucky, of said Regional Office since August 4, 1949?"

Mr. Robertson: "Seward Building, Main Street, Pikeville, Kentucky, at all times inquired about."

Mr. Allen: "Question 19. What was the Post Office Box Number in Pikeville, Kentucky, of the Regional Office of Region 58 of District 50 between the dates October 28, 1948, and August 4, 1949, and what has been the Post Office Box Number in Pikeville, Kentucky, of said Regional Office since August 4, 1949?"

Mr. Robertson: "District 50 and the United Construction Workers, as such, do not have a post office box in Pikeville, Kentucky. Post Office Box 50 has been the post office box of District 30, United Mine Workers of America, and Thomas Rancy, International Board member, United Mine Workers of America, for some 17 years, and because of the crowded condition in the Post Office and it being unable to provide a post office box for District 50 and the United Construction Workers, the Post Office employees have been placing the mail of District 50 and the United Construction Workers in Post Office Box 50."

Mr. Allen: "Question 20. When and upon whose authority was Regional Office of Region 58 of District 50 organized or set up?"

Mr. Robertson: "Upon the authority of the page 1289 } Chairman of the Organizing Committee of District 50. The Regional Office of Region 58 was set up October 25, 1948, with David Hunter designated by the Chairman of the Organizing Committee of District 50, as Acting Regional Director. Effective June 16, 1949, David Hunter's status was changed from that of Acting Regional Director to Regional Director of Region 58 of District 50."

Mr. Allen: "Question 24. Furnish a copy of all credentials issued by District 50 or by its administrative officer to David Hunter for proper identification and for use by him between the dates October 28, 1948, and August 4, 1949; and furnish a copy of all credentials issued by District 50 or by its administrative officer to David Hunter for proper identification and for use by him after August 4, 1949."

Mr. Robertson: "Attached hereto and marked Exhibit 3 is the form of credentials issued by District 50 to David Hunter and to all other field staff personnel during all the periods of time inquired about. The attached Exhibit 3 is marked 'void' to prevent any possible improper use of the card."

May I show that to the jury please, Your Honor?

"District 50, United Mine Workers of America.

"This is to certify that is hereby duly authorized and legally commissioned to act as representative of District 50, United Mine Workers of America. This commission is issued by virtue of the authority vested in me by the International Union, and entitles the bearer to do and perform all lawful acts pertaining to his office. This commission shall expire unless sooner revoked by the Chairman of the Organizing Committee.

.....
Chairman, Organizing Committee
District 50, UMWA

.....
Signature of Representative

Form 498," and what appears to be a seal, "United Mine Workers of America."

I can't read the balance of it.

(Card exhibited to the jury.)

Mr. Allen: "Question 26. What written reports on work performed on matters of policy or organizational activities did David Hunter, as an employee or representative of District 50, submit to District 50 or to its administrative officer between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949? Furnish a copy of all such reports."

Mr. Robertson: "Unless excused by the Chairman of the Organizing Committee from so reporting, weekly reports on the progress and activities of the region are required from each Regional Director. These reports, being of page 1291 } no permanent use or value to the organization, are required to be preserved for a minimum period of three months. Copies of available reports of Regional Director Hunter are attached hereto and marked Exhibit 4, with sub-numbers 4-1, 4-2, and so forth."

If Your Honor please, I call attention to the fact that the reports of David Hunter to District 50 are identical to his reports to the United Construction Workers. They are carbon copies of the same thing.

I refer now to Exhibit 4-1:

“United Construction Workers, Affiliated
with United Mine Workers of America

“January 23, 1950

“Mr. A. D. Lewis,
Chairman of Organizing Committee
District 50, UMWA and UCW,
United Mine Workers Building
Washington 5, D. C.

“Weekly Report for 3 weeks ending
January 7, 14, and 21, 1950.”

I read the report for Thursday, January 12, 1950:

“I had an appointment in Frankfort, Kentucky, with Mr. John A. Kech, Highway Commissioner, relative to increasing the labor rates from 80 cents to \$1.00 within this area. Mr. Tom Raney, International Board member, was in Lexington, Kentucky, and went with me to meet Mr. Kech. Due to illness, Mr. Kech was home. Therefore, we met with the
page 1292 } Deputy Commissioner. The Deputy Commissioner felt sure the labor rates would be increased to some extent. Up to date, not one of the contractors have filed a complaint against the rates that we have been able to squeeze out of them above the bid-in rate for this area.

“He also stated that the Highway Department allowed the contractors above the 90-cent bid-in rate set by the Department when work was to be done within this region. I am expecting to hear from Commissioner Kech when he returns to his office.”

I refer now to Exhibit 4-6:

“A. D. Lewis, Director
O. B. Allen, Comptroller
United Construction Workers
Affiliated with United Mine
Workers of America

“Address Reply to: Pikeville
Regional Office, P. O. Box 50,
Pikeville, Kentucky

“Phone 1031

"March 1, 1950

"Mr. A. D. Lewis,
Chairman of Organizing Committee
District 50, UMWA and UCW,
United Mine Workers Building
Washington 5, D. C.

"Weekly Report for the weeks ending
February 18 and 25, 1950."

I refer to the last paragraph of the report, entitled "Organizational."

page 1293 } "I am endeavoring to bring all construction
jobs within Region 58 under contract with the
UCW. There are several contracts being let by the State
Highway Department to contractors who are not already under
contract within this region. These jobs will be starting
in the near future, and I anticipate a minimum amount of
trouble in signing up these contractors."

Mr. Mullen: What were you reading from there, please;
4-6?

Mr. Robertson: Exhibit 4-6.

Mr. Mullen: The date is what?

Mr. Robertson: Dated March 1, 1950, the final paragraph
immediately above the signature:

"Fraternally yours,

DAVID HUNTER, Acting Director,
Region 58."

Mr. Mullen: All right, I have it.

Mr. Robertson: I read now from Exhibit 4-8, the same
letterhead, addressed to:

"Mr. A. D. Lewis,
Chairman of the Organizing Committee
District 50, UMWA and UCW,
United Mine Workers Building
Washington, D. C.

"March 23, 1950

"Weekly Report for the weeks ending
March 11 and 18, 1950."

page 1294 } I read the report for Saturday, March 18,
1950:

"Checking the four construction jobs we have under contract, and also the road into Breathitt County, Kentucky, which Representative Hart informed me was impassable. I found the road in fair condition, and had no difficulty in getting through. I have reasons to believe Representative Hart has lied on several occasions. Therefore, I wanted to know definitely if the road was passable or not. At times his actions show he resents taking orders, and in order not to carry them out will make some excuse, such as 'The roads are impassable.'

"I have requested Representative Hart to be in this office Wednesday, 10 a. m., March 22."

I refer now to Exhibit 4-17, the same letterhead, dated June 27, 1950, addressed to:

"Mr. A. D. Lewis,
Chairman of Organizing Committee
District 50, UMWA and UCW,
United Mine Workers Building
Washington 5, D. C.

"Weekly Report for week ending
June 24, 1950."

I read the report for Friday, June 23, 1950:

"At the request of Mr. Tom Raney, I was in Lexington, Kentucky, for the purpose of meeting with President Sam Caddy, District 30, UMWA, to obtain the support from the Hazard, Kentucky, office in organizing a large
page 1295 } construction job at Toner, Kentucky. However,
Mr. Caddy was ill and could not attend.

"Also, Mr. Raney was late in arriving, and had to leave early the next morning for Middlesboro, Kentucky."

Mr. Mullen: Is that the full report for that day?

Mr. Robertson: I don't think I read it before. I will read it this time for both times:

"Had I not been invited to attend a dinner in honor of Mr. Val Hitch, who is being transferred from District 30 to the Washington office, my trip would have been a total loss. With the exception of Mr. Sam Caddy, Mr. Tom Raney, and

Mr. Joe Davis, the entire staff of District 30 was present at the dinner."

I refer now to Exhibit 4-28, on the same letterhead, dated September 14, 1950, addressed to Mr. A. D. Lewis, Chairman of Organizing Committee, District 50, UMWA, UCW, United Mine Workers Building, Washington 5, D. C.

"Weekly Report for Week Ending
September 9, 1950."

I read the report of Thursday, September 7, 1950:

"Met with Mr. Page"—I had marked that one out. I don't think it is relevant.

I read the part of the report under "Organizational," the final paragraph above the signature:

"Paintsville, Kentucky, area. Representative page 1296 { Robinson has been unable to make any progress in organizing the Paintsville area. Inasmuch as he has been run off a couple of jobs, I believe he has lost his nerve and is afraid to work alone. Therefore, I have temporarily assigned him to work with Representative Gilbert in the Williamson area. I am hoping that a few weeks' work with another representative will help him regain his lost confidence. Otherwise, I am of the opinion Representative Robinson will have to be replaced.

"This matter has been discussed with Representative Robinson, and I certainly hope he can overcome the fear he has developed.

"Fraternally yours,

DAVID HUNTER, Acting Director
Region 58."

I refer now to Exhibit 5-1, which is Field Representative's Weekly Report, Region No. 22; Organization, District 50, United Mine Workers of America.

"Weekly Report of William Hart, Representative; Address: 411 Prunty Bldg., Clarksburg, West Virginia. For the week ending July 1, 1950, all reports of Hart prior to that date having been destroyed."

page 1297 } Mr. Allen: Mr. Robertson, I suggest you look at 4-28 under date of September 7 and see if you want to read that.

Mr. Mullen: That is what he said he did not read because he didn't think it was relevant.

Mr. Robertson: I am perfectly willing to read it if you want it. Would you object to it?

Mr. Mullen: I am not asking for anything.

Mr. Robertson: All right, I will read it:

"Thursday, September 7, 1950. Met with Mr. Page, President of the Associated Construction Company. This company operates from Marian, Virginia, and is erecting a large school building at Jeff, Kentucky. Mr. Page's only obligation to signing a contract was the fact that his subcontractors are all A. F. of L., and he felt they may refuse to go along with or sign a contract. I gave Mr. Page a week to think it over, as I intend to close the job at Jeff, Kentucky."

Mr. Allen: "Question 27: In what capacity or capacities was William O. Hart employed by District 50 between the dates October 28, 1948, and August 4, 1949, and in what capacity or capacities has he been employed by District 50 since August 4, 1949, who employed him in each capacity, for what period or periods was he employed in each capacity?"

Mr. Robertson: "Effective March 24, 1949, page 1298 } Mr. William O. Hart was employed by District 50 as a field representative and has been employed in that capacity to date. All employment on behalf of District 50 is done by the Chairman of the Organizing Committee, who employed Mr. Hart in this case."

Mr. Allen: "Question 28: Furnish a copy of all credentials issued by District 50 or by its administrative officers to William O. Hart for proper identification and for use by him between the dates October 28, 1948, and August 4, 1949, and furnish a copy of all credentials issued by District 50 or by its administrative officers to William O. Hart for proper identification and for use by him after August 4, 1949."

Mr. Robertson: "Mr. Hart has been furnished credentials of the form set forth in Exhibit 3."

That is the one I showed the jury, Your Honor.

Mr. Allen: "Question 35: In what capacity or capacities was Thomas Davis employed by District 50 between the dates October 28, 1948, and August 4, 1949, and in what capacities has he been employed by District 50 since August 4, 1949, who employed him in each capacity, for what period or periods was he employed in each capacity?"

Mr. Robertson: "During all the times inquired about. Mr. Thomas Davis was employed by the United Construction Workers by its director and assigned as regional page 1299 } director of Region 31 of the United Construction Workers and District 50, United Mine Workers of America, and was assigned also as assistant to the Chairman of the Organizing Committee of District 50, United Mine Workers of America, and assistant to the Director of the United Construction Workers."

Mr. Allen: "Question 43: Was Thomas Raney a member of the International Executive Board of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and if so during what period or periods, and has he been a member of said International Executive Board at any time since August 4, 1949, and if so during what period or periods?"

Mr. Robertson: "Mr. Thomas Raney is a duly constituted member of the International Executive Board, United Mine Workers of America, and has been at all times inquired about, but at no time during that time has Mr. Raney been employed by the United Construction Workers or District 50. With respect to his employment by the United Mine Workers of America, his employment is derived and performed under the constitution of the International Union. Mr. Raney was appointed by the President of the International Union with the approval of the International Executive Board in conformity with and in the manner provided by the International Constitution."

Mr. Allen: "Question 46: What was the location in Pikeville, Kentucky, of the office of Thomas Raney as an employee or representative of District 50 or United Construction Workers or United Mine Workers of America, between the dates October 28, 1948, and August 4, 1949, and what has been the location in Pikeville, Kentucky of said office since August 4, 1949?"

Mr. Robertson: "Mr. Raney has never been an employee or representative of District 50 of the United Construction Workers. His address, as International Board Member of the International Union, is Seward Building, Pikeville, Kentucky."

Mr. Allen: "Question 47: What was the location in Pikeville, Kentucky of the office of David Hunter as an employee or representative of District 50 or the United Construction Workers or United Mine Workers of America, between the dates October 28, 1948, and August 4, 1949, and what has been the location in Pikeville, Kentucky of the said office since August 4, 1949?"

Mr. Allen: "Seward Building, Main Street, Pikeville, Kentucky."

Mr. Allen: "Question 49: What were the duties of the Regional Director of Region 58 of District 50 between the dates October 28, 1948, and August 4, 1949, and what has been the duties of the Regional Director of said Region 58 since August 4, 1949?"

Mr. Robertson: "The duties of the Regional page 1301 $\frac{1}{2}$ Director are set out by the rules of District 50 attached as Exhibit 2 to these answers, and in particular by Article 5, Section 1 thereof, appearing on page 18, and in addition such other duties as may be assigned from time to time by the officers of District 50 and more particularly by the appointment letter, a copy of which is hereto attached and marked Exhibit 6."

I read Exhibit 6:

"October 25, 1948.

"Mr. David Hunter, Acting Regional Director, District 50, UMWA and UCW, Hopewell, Virginia.

"Dear Sir and Brother:

"Effective immediately but for record purposes effective November 1, a new Region is being created to be known as Region 58, comprising the following counties in Kentucky, Virginia, and West Virginia: Mingo and Logan Counties, West Virginia. Buchanan and Dickinson Counties, Virginia. And the following Counties in Kentucky: Letcher, Pike, Martin, Lawrence, Johnson, Floyd, Knott, Magoffin, Morgan and Elliott. I am attaching hereto a list of local unions being transferred from Region 24 to Region 58 and a list of local unions being transferred from Region 56 to Region 58.

"After investigation, if there are any local unions which page 1302 $\frac{1}{2}$ are not included on the attached list either of the *of the* Regional Directors affected, advise this office in order that we may effect a formal transfer to your region.

"Your duties will be to service the existing local unions, organize new local unions, and carry on the work of the Regional Office. All correspondence between the National Office and your Region will be addressed to you, and full information pertaining to any local union under your direction will be given at any time upon request.

"It will be necessary for you to approve all bills, expense accounts of the field staff, direct the staff members in their

work in the interest of organization, and keep the National Office continually and completely informed of all the activities pertaining to the organization in your region.

"Permanently assigned to your Region will be the following representatives: Albert Walk, UCW, Williamson, West Virginia. Orville Foster, UCW, Logan, West Virginia, and J. H. Hatfield, District 50, Williamson, West Virginia. Mr. J. B. Boggs, UCW Representative of Jenkins, Kentucky, will be assigned to your Region temporarily.

"I am enclosing herewith copies of letters I have today addressed each of these field representatives which are self-explanatory.

"You are authorized to set up an office in Pikeville, Kentucky comprising two sizeable rooms. Before page 1303 } definitely leasing the office space you are to advise this office by telephone of the amount of the rent to be paid. After receiving authority by telephone to do so, you may have the lease drawn up and forwarded to Mr. Allen for execution. You are also authorized to obtain prices on office equipment necessary to equip the two-room office in Pikeville, with the exception of a typewriter and mimeograph machine, which will be ordered by Mr. Allen. When the office is ready and arrangements have been completed to open the office and install office equipment, you will be authorized to employ the services of a stenographer at a salary of not to exceed \$150 per month.

"I am also enclosing copies of letters I have today addressed to regional directors Box Duty. You will note I have requested each of them to address a communication to each of the local unions being transferred advising of your appointment as acting Regional Director of Region 58 and requesting their cooperation with you. You will also note that I have requested regional director Box and Duty to transfer to your office when completed all the permanent records of the local unions involved in the transfer. Wishing you success in your new position I am, Yours Truly, A. D. Lewis, Chairman, Organizing Committee."

I state that the enclosures with that letter are not included with that exhibit.

page 1304 } Mr. Allen: "Question 57: Did the rules of District 50 at any time between the dates of October 28, 1948, and August 4, 1949, provide that the organization known as District 50 should work under and be subject to the constitution of the International Union, that is, the United Mine Workers of America, as provided in Article 20 thereof, and if so during what period or periods, and have said rules

at any time since August 4, 1949, so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 58: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that the administrative officer operating under the authority of Article 20 of the constitution of the International Union, that is United Mine Workers of America, should have general and complete supervision over and administration of the affairs of District 50, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 59: Did the rules of District 50 at any time between October 28, 1948, and August 4, 1949, provide that the secretary-treasurer under the direction of the administrative officer should, among other things, page 1305 } have custody of all books, documents and papers of District 50, have charge of the seal of District 50, and pay all bills and current expenses unless otherwise directed by the administrative officer of District 50, or the International Executive Board of United Mine Workers of America, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 60: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that the secretary-treasurer and all aids and assistants who handle funds of District 50 should give bond for the faithful performance of their respective duties in such sums as might be fixed by the International Executive Board of the United Mine Workers of America, and if so, during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so during what period or periods?"

Mr. Robertson: Yes, at all times inquired about."

Mr. Allen: "Question 61: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that the administrative officer and the secretary-treasurer, their aids and assistants should in all respects be subject to and conform with the constitution page 1306 } and policies of the International Union, that is, United Mine Workers of America, and if so during what period or periods, and have said rules at any time

since August 4, 1949, so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 62: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that all local unions must be chartered by and should be under the jurisdiction of and subject to the laws of the International Union, that is United Mine Workers of America, and that the administrative officer of District 50 should have authority to designate a representative to administer the affairs of any local union where it should be found to be in the best interests of the membership to do so, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 63: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that charters might be issued to local unions and fees therefor charged in accordance with the provisions of the constitution of the International Union, United Mine Workers of America, and that charters might be issued only by authority of the administrative officer of District 50, and if so during what period or periods, and have said rules at any time since August 4, 1949, provided, and if so during what period or what periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 64: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that local unions should be composed of 10 or more members engaged in Occupations within the jurisdiction of District 50 and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 65: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provided that any member except the membership in the National Chamber of Commerce or the Ku-Klux-Klan or the Communist Party or certain other organizations should be expelled from United Mine Workers of America and be permanently debarred from holding office in the United Mine Workers of America, and that any member of United Mine Workers who should accept office in any dual organization should be permanently expelled from United Mine Workers of America unless reinstated by the International Executive

Board of United Mine Workers of America, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so during page 1308 } what period or periods?"

Mr. Robertson: "Yes, at all times inquired about. However, the question refers to only certain parts of the text which reads in full as follows: 'Any member accepting membership in the Industrial Workers of the World, the Working Class Union, the One Big Union or any other dual organization or membership in the National Chamber of Commerce or the Ku-Klux Klan or the Communist Party or Fascist, Nazi, or Bund organizations, shall be expelled from the United Mine Workers of America, and is permanently debarred from holding office in the United Mine Workers of America, and no member of any such organization shall be permitted to have any membership in our union unless they forfeit their membership in the dual organization immediately upon securing membership in the United Mine Workers of America. Any member of the United Mine Workers of America who accepts office in any dual organization shall be permanently expelled from the United Mine Workers of America, unless reinstated by the International Executive Board.'"

Mr. Allen: "Question 66: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that if a local union for any cause should attempt to dissolve, disband, or surrender its charter, or if its charter should be revoked, the charter and all moneys and supplies and property, including real estate, page 1309 } should be taken over by the International Union, that is the United Mine Workers of America, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about. The answer to this question is found in the rules of District 50 as revised March 15, 1949, Article 4, Section 12, beginning on page 13 thereof which reads as follows: 'Should the local union for any cause attempt to dissolve, disband, or surrender its charter, or should its charter be revoked, the charter and all moneys, supplies, and property, including real estate, shall be taken over by the International Union, provided that any remaining member in good standing of such local union shall be given transfer cards. No local union shall be allowed for any reason or purpose to divide its funds among its members. Any local union using its funds for other than legitimate purposes shall be fined double the amount so used

pursuant to the International Constitution. Any member receiving money from a local union for other than a legitimate purpose shall be suspended until double the amount that he received is returned. It shall be illegal to contribute funds for the promotion of the candidacy of any candidate for office within the organization."

Mr. Allen: "Question 67: Did the rules of page 1310 } District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that any local union using its funds for other than legitimate purposes should be fined double the amount so used pursuant to the International Constitution of the United Mine Workers of America, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about. The answer to this question is found in the rules of District 50 as revised March 15, 1949, Article 4, Section 12, beginning on page 13 thereof, which reads as follows: 'Should the local union for any cause attempt to dissolve, disband or surrender its charter, or should its charter be revoked, the charter and all moneys, supplies and property, including real estate, shall be taken over by the International Union, provided that any remaining member in good standing of such local union shall be given transfer cards. No local union shall be allowed for any reason or purpose to divide its funds among its members. Any local using its funds for other than legitimate purposes shall be fined double the amount so used pursuant to the International Constitution. Any member receiving money from a local union for other than a legitimate purpose shall be suspended until double the amount received is returned.

It shall be illegal to contribute for the promotion page 1311 } of the candidacy of any candidate for office within the organization.'"

Mr. Allen: "Question 68: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that local union by-laws should not conflict with the laws or rulings of the International Union, that is, United Mine Workers of America, or the rules of District 50, or the collective bargaining agreement of the local union, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question No. 69: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that all local officers entrusted with the

finances of the organization must give bond to insure the faithful performance of their duty, the bond to be secured and the amount thereof to be determined by the administrative officer of District 50, and that any local union refusing to bond its officers as required in said rules might be subject to the penalties provided in the constitution of the International Union, that is, United Mine Workers of America, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided, and if so, during what period or periods?"

Mr. Robertson: "Yes, at all times inquired page 1312 $\frac{1}{2}$ about. The answer to this question is contained in the rules of District 50 as revised March 15, 1949, Article 4, Section 15, appearing on page 17 thereof, which reads as follows: 'All local officers entrusted with the finances of the organization must give bond to insure the faithful performance of their duty. The bond to be secured and the amount thereof to be determined by the administrative officer of the district. Any local union refusing to bond its officers as required herein may be subject to the penalties provided in the International Constitution.'

The Court: Gentlemen, let's recess for five minutes.

Mr. Allen: "Question 70: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949, provide that the books and records of each local union should be turned over for examination and audit upon the request of any authorized representative of District 50 or the International union, that is the United Mine Workers of America, and if so, during what period or periods, and have said rules at any time since August 4, 1949 so provided and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about. The answer to the question is contained in the rules of District 50 as revised March 15, 1949, Article 4, Section 16, appearing on page 18 thereof, which reads as follows: 'The page 1313 $\frac{1}{2}$ books and records of each local union shall be turned over for examination and audit upon the request of any authorized representative of the district or the International Union.'

Mr. Allen: "Question 77: Did the rules of District 50 at any time between the dates October 28, 1948, and August 4, 1949 provide that no strike action should be taken which should not comply with existing laws and before it should have been approved by a majority of the workers involved, and that no strike should take place without first obtaining approval thereof from the administrative officer of District 50, and if so

during what period or periods, and have said rules at any time since August 4, 1949 so provided, and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 78: With respect to charges against and trials and appeals of officers and members of a local union, did the rules of District 50 at any time between the dates October 28, 1948 and August 4, 1949 provide that the decision of the local union should close the case so far as that tribunal was concerned, the accused or the accuser have the right of appeal to the district but that this should not prevent individuals whose membership should be at stake from appealing to the International Executive Board of the United Mine Workers of America, which body's decision should be final and binding until reversed by the International Convention of the *United Mine Workers of America*, and if so during what period or periods, and have said rules at any time since August 4, 1949, so provided and if so during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about. The answer to this question is contained in the rules of District 50 as revised March 15, 1949, Article 7, Section 1, appearing on page 21 thereof, which reads as follows:

"When any local officer or any member not an officer is accused of violating any of the organization laws or any transgression against the organization or any of its officers or members, except where the charge is fomenting, leading or encouraging a dual union or a dual movement within the organization, the charge must be first lodged with and prosecuted before the local union, of which the alleged offender is a member, and the decision of the local union shall close the case so far as that tribunal is concerned, but should the accused or the accuser be dissatisfied with the decision of the tribunal first trying the case, either shall have the right of appeal to the District. This shall not prevent individuals whose membership is at stake from appealing to the International Executive Board, which body's decision shall be final and binding until reversed by the International Convention. When any officer or member is charged with fomenting, leading or encouraging a dual union or a dual movement within the organization, upon charges being filed with the International Executive Board, notice to such accused person or persons of not less than five days of the time and place of hearing shall be given, and the hearing of such charges shall be had. If the accused shall be

found guilty by the International Executive Board, it may order his suspension or removal from office or membership, and an appeal may be taken by the accused to the next International Convention. In all such cases the decision of the International Executive Board shall be effective unless reversed by the International Convention.' "

Mr. Allen: "Question 79: Did the rules of District 50 at any time between the dates October 28, 1948 and August 4, 1949 provide that under the direction of the administrative officer of District 50 there should be published at least twice monthly an official paper to be known as the News, and that this publication should be edited with a view to promoting the welfare of the entire membership and should reflect the activity and the progress of the organization throughout the nation and should convey information about the program of the United Mine Workers of America and other news and editorial matter having a bearing upon the economic and general welfare of the membership, and if so during what period or periods; and have said rules at any time since August 4, 1949, so provided and if so during what page 1316 } period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "Question 84 (as reframed under direction of the Court): What written instructions, statements, reports, memoranda, letters, and other papers pertaining to Region 58 of District 50 or to Region 58 of United Construction Workers were submitted by United Mine Workers of America or by the International Executive Board or the President or any other International officer of United Mine Workers of America to District 50 or to the administrative officer or secretary-treasurer or comptroller of District 50, between the dates October 28, 1948, and August 4, 1949, and also since August 4, 1949. Furnish a copy of all such instructions, statements, reports, memoranda, letters and other papers."

Mr. Robertson: "Answering the question as modified by direction of the court, this defendant attaches hereto Exhibit 8."

I read Exhibit 8:

Under the heading "United Mine Workers of America, Thomas Kennedy, Vice-President, telephone Metropolitan 0530, United Mine Workers of America seal, United Mine Workers Building, Washington 5, D. C., September 29, 1950.

"To all District Presidents, United Mine Workers of America.

page 1317 } "Dear Sirs and Brothers:

"The International Executive Board at its recent meeting held in Washington during the week of September 12 appointed a committee and authorized this committee to define a national policy with respect to construction work in and around the coal mining industry, and especially to the relationship that members of District 50 and the United Construction Workers might play in such policy.

"District 50 and the United Construction Workers are a part of the UMWA and as such are entitled to the cooperation of all members of the UMWA, all District officers and field representatives of both the national organization and all districts in the conduct of work in their efforts to organize the unorganized in the vicinity adjacent to and in the neighborhood of coal mining operations.

"The policy adopted at several conventions by the UMWA was to endorse the activities and the work of District 50 and UMW to the end that all workers, many of whom are sons, daughters and members of families of the UMWA adjacent to and in the area where coal mines are located, would have an opportunity to belong to the organization that had done so much for their people.

"After careful consideration of the subject matter, the attached declaration of policy was adopted and becomes the policy of the International Union and is applicable to all districts in the United Mine Workers of America. As President of your district you are therefore required to apply this policy hereafter in handling the subject matter. I earnestly urge your sincere support and cooperation in this policy because I firmly believe it will redound to the best interests of our membership and organization.

"On behalf of the committee, very truly yours, Thomas Kennedy, Vice-President."

"This paper union made by District 50, UMWA."

Then the thing with that is this: Entitled "National policy, in re: District 50:

"Construction work in or around coal mines or in connection with the production or the preparation of coal or coke, or in the sinking of shafts or slopes, or the driving of tunnels,

including repairs and maintenance work on company houses, plants and buildings, shall be under the jurisdiction of the United Mine Workers of America, the prevailing wage rates to apply and govern in such work.

"Where some of this work is done in such coal mining areas by members of District 50, UMWA and the United Construction Workers they shall deposit transfer cards in the local union of the parent organization having jurisdiction over the work, and such cards shall be accepted in lieu of initiation fees. Upon completion of the work in question said members of

District 50 and the UCW shall be issued transfer page 1319 $\frac{1}{2}$ cards to permit them to return to local unions in District 50.

"Employees of company stores, truck drivers hauling coal from the mine not under the bituminous or anthracite agreements and who are not paid by the coal companies, timber haulers and cutters, coke plants located separate and apart from coal mines, and fabricating plants of contractors who do constructing work in and around the mines shall remain under the jurisdiction of District 50.

"With respect to contractors presently under contract with District 50 and UCW, representatives of District 50 and UCW will cooperate with the district organizations in supplying the district officers with information relative to the names and locations of these contractors who do work in and around the mines, and will cooperate in every way possible to amend the present existing contracts for this work and will surrender jurisdiction to district organizations of the parent organization and assist, if necessary, in attempting to write an agreement between the contractors in the district organizations covering work performed by these contractors in and around the mines.

"District 50 and UCW will attempt in all instances where existing wage contracts are in effect or new contracts written with new contractors to incorporate a clause therein surrendering all work done by the contractor in and page 1320 $\frac{1}{2}$ around the mines to the jurisdiction of the parent organization."

Mr. Allen: "Question 85: Did District 50 or its administrative officer at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, have the right to suspend or remove or cause to be suspended or removed from office the National Director of United Construction Workers—"

Mr. Robertson: Wait a minute: "As to the National Director of United Construction Workers, no."

Mr. Mullen: That is the one that was amended. Here is the amendment.

(Counsel conferring.)

Mr. Robertson: Would you read that again, please?

Mr. Allen: "Did District 50 or its administrative officer at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, have the right to suspend or remove or cause to be suspended or removed from office the National Director of the United Construction Workers—"

Mr. Robertson: "As to the National Director of United Construction Workers, no."

Mr. Allen: "The National Comptroller of United Construction Workers?"

Mr. Robertson: "As to the National Comptroller of United Construction Workers, no."

page 1321 } Mr. Allen: "Or Thomas Raney?"

Mr. Robertson: "As to Thomas Raney, no."

Mr. Allen: "Thomas Davis?"

Mr. Robertson: "As to Thomas Davis, no."

Mr. Allen: "David Hunter?"

Mr. Robertson: "As to David Hunter, yes."

Mr. Allen: "William O. Hart?"

Mr. Robertson: "As to William O. Hart, yes."

Mr. Allen: "H. G. Robinson."

Mr. Robertson: "H. J. Robinson, no."

Mr. Allen: "And if so state the following: (a) Who had such right?"

Mr. Robertson: "Chairman of the Organizing Committee, District 50, United Mine Workers of America."

Mr. Allen: "(b) As to whom could such right have been exercised?"

Mr. Robertson: Answered.

Mr. Allen: "(c) During what period or periods could such right have been exercised?"

Mr. Robertson: "During all periods inquired about."

Mr. Allen: "(d) What cause or causes if any were necessary for the exercise of such right?"

Mr. Robertson: No set rules to govern. It is a matter of administrative practice."

Mr. Allen: "Question 86: Did United Mine
page 1322 } Workers of America or its International Executive Board or its President at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, have the right to suspend or remove or cause

to be suspended or removed from office the administrative officer of District 50"—

Do you want to break that up?

Mr. Robertson: I think you had better go ahead.

Mr. Allen: "—the Secretary-treasurer of District 50, the comptroller of District 50, the National Direction of United Construction Workers, the National Comptroller of United Construction Workers, or Thomas Raney, Thomas Davis, David Hunter, William O. Hart, or H. G. Robinson, and if so state the following: Who had such right, as to whom could such right have been exercised, during what period or periods could such right have been exercised, what cause or causes if any were necessary for the exercise of such rights?"

Mr. Robertson: "This is the same question as the question numbered 116 in the interrogatories propounded to Defendant United Mine Workers of America, and the answer of that Defendant is hereby adopted as the answer of this Defendant, said answer reading as follows: 'Thomas Davis, David Hunter, William O. Hart, and H. G. Robinson (correct name Harvey J. Robinson) are employees of District 50 or the United Construction Workers and are not international officers or appointed employees of the International page 1323 } union. As to Thomas Raney, the International Constitution, United Mine Workers of America, Article 9, Section 3, reads as follows: He may suspend or remove any international officer or appointed employee for insubordination or just and sufficient cause.'"

I think that refers to the President of the Union.

"the word 'he' refers to the President of the International Union as set out in Section 1 of Article 9."

'Such administrative acts as may be taken by the International President under section 3 above quoted are each and all subject to review by the International Executive Board or by the International Convention under the terms and in the manner provided by Article 18 of the International Constitution. As to the Administrative Officer of District 50, the secretary-treasurer of District 50, the Comptroller of District 50, the National Director of the United Construction Workers and the National Comptroller of the United Construction Workers, they and each of them are subject to the direction and control as provided by Article 20 of the International Constitution of the officers of District 50 and the United Construction Workers respectively. There is no instance in which the President of the International Union sought to

cause the removal or suspension from office of the Administrative Officer of District 50, the Secretary-treasurer of District 50, the Comptroller of District 50, the National Director of the United Construction *Woer*kers, the National page 1324 } Comptroller of the United Construction Workers, or Thomas Raney, Thomas Davis, David Hunter, William O. Hart, or H. G. Robinson. Presumably if the International president sought to cause such removal, his position would give him influence, but in all cases if there were a suspension or removal the person suspended or removed has the recourse against such suspension or removal approved by the Constitution of the International Union in Article 18."

Mr. Allen: "Question 87: Did United Mine Workers of America or its International Executive Board or its president at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, have the right to suspend or revoke or to cause to be suspended or revoked the charter or certificate of affiliation granted by United Mine Workers of America to district 50, or to United Construction Workers, and if so state the following: Who had such right, as to which organization could such right have been exercised, during what period or periods could such right have been exercised, what cause or causes if any were necessary for the exercise of such right?"

Mr. Robertson: "This Defendant is not competent to answer with respect to this question. However, this Defendant is advised that the Defendant United Mine Workers of America in response to interrogatories to it numbered 117 has made the following reply: 'Yes, but only upon page 1325 } the conditions and in the manner provided for in the International Constitution and subject to review in the manner provided in International Constitution.'"

Mr. Allen: "Question 89 (as reframed): Were charter fees, initiation fees and dues paid to district 50 by its local unions and members between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, and was any portion of such fees and dues paid by District 50 to United Construction Workers or the United Mine Workers of America, and if so, why?"

Mr. Robertson: "Answering the question as modified by direction of the Court, this defendant says: Yes, on all except United Construction Workers."

Mr. Mullen: Wait a minute.

Mr. Robertson: Wait a minute. I read the wrong one.

Mr. Mullen: You read the wrong answer.

Mr. Robertson: Excuse me. I read the wrong one.

89 is what I should have read: "Answering the question as modified by direction of the Court, this defendant says: Yes, on all except United Construction Workers."

Mr. Allen: "Question No. 90: State the following for the years 1948 and 1949 each: (a) Were funds advanced or paid by District 50 to or for the account of United page 1326 } Construction Workers or United Mine Workers of America, and if so, why? (b) Were funds advanced or paid by United Construction Workers or United Mine Workers of America to or for the account of District 50, and if so why?"

Mr. Robertson: "Answering the question as modified by the Court this Defendant says: From time to time District 50 United Mine Workers of America makes operational advances to United Construction Workers as a direct loan, all of which is required to be repaid. There are no such advances made by District 50 to the United Mine Workers of America.

"(b) From time to time the International Union has made operational advances to District 50, United Mine Workers of America, as a direct loan, all of which is required to be repaid. There have been no such advances by United Construction Workers."

Mr. Allen: Interrogatories to the United Mine Workers of America, Interrogatories (4), filed September 13, 1950.

"Question 6: Furnish a copy of the charter or certificate of affiliation granted by the United Mine Workers of America to District 50 showing when such charter or certificate of affiliation was granted to District 50."

Mr. Robertson: "Copy of the charter of District 50 is attached hereto."

page 1327 } Mr. Robertson: I will read it to the jury, if I may, Your Honor:

"U. M. W. A. Exhibit
Answering Interrogatory #6

**"CHARTER
THE
UNITED MINE WORKERS OF
AMERICA**

hereby establishes a provisional District No. 50, under the conditions herein set forth, to be known as

Gas and By-Product Coke Workers

and to have jurisdiction over workmen employed in and about plants processing coal within the United States and Canada; and for the establishment of such conditional district, this charter is issued to

JAMES NELSON

President.

JAMES NELSON (Acting)

Secretary-Treasurer.

their successors in office and associates in membership.

"The said district, and all sub-districts and local unions established therein, shall be subject to the jurisdiction of the International Organization United Mine Workers of America, and may adopt constitutions and by-laws not in conflict with the constitution of the United Mine Workers of page 1328 } America and this charter of affiliation.

"Said district, its members and subordinate divisions, shall acquire no rights in the funds, or to participate in the election or conventions of the United Mine Workers of America, but shall have their own autonomy with respect to their elections, conventions and wage negotiations.

"The district and its members shall pay the International Organization United Mine Workers of America dues and assessments, as provided in the International Constitution, and shall receive the support and guidance of the International Organization in matters of policy, administration, organization and wage negotiations, as its International Executive Board may approve.

"All controversies or questions of interpretation arising under this charter shall be determined by the tribunals set up in the constitution of the United Mine Workers of America, and this charter of affiliation shall be submitted for approval to the next regular constitutional convention of the United Mine Workers of America.

"By order of the International Executive Board.

"Dated this 1st day of September, 1936

(Signed) JOHN L. LEWIS

President,

United Mine Workers of America

(Signed) THOMAS KENNEDY

Secretary-Treasurer,

United Mine Workers of America"

page 1329 } the Charter or Certificate of Affiliation granted
by United Mine Workers of America to United
Construction Workers, showing when such charter or certificate of affiliation was granted to the United Construction Workers."

Mr. Robertson: "Copy of Charter of United Construction Workers is hereto attached."

"U. M. W. A. Exhibit
Answering Interrogatory #7

"ESTABLISHED JANUARY 25th 1890

INTERNATIONAL UNION

UNITED MINE WORKERS OF AMERICA

DOTH GRANT THIS CHARTER TO

A. D. Lewis, Chairman
Washington, D. C.

Gardner Wales, Comptroller
Washington, D. C.

United Construction Workers Division
And Their Successors in Office

To Constitute a Local Union to be known as U. C. W. D. District No. 50, for the purpose of effecting thorough organization of the workers in this Industry. And said Local Union being duly organized is hereby authorized and empowered to admit to membership any person in accordance with the provisions of the constitution of the United Mine Workers of America and to enact a code of By-Laws for the government of said Local Union provided that the said Local
page 1330 } Union shall in all cases conform to the constitution of the United Mine Workers of America.

"In Witness Whereof we have hereunto attached our signatures and caused the Seal of the United Mine Workers of America to be affixed.

Done at Washington, D. C. this 6th day of June, 1942.

(Signed) JOHN L. LEWIS, President.

(Signed) THOMAS KENNEDY, Secretary."

Mr. Mullen: Will you let him read that back? I think you made some errors in it.

(Discussion off the record.)

Mr. Allen: "Question 9: Did the constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide that among other objects it was an object of the United Mine Workers of America to do the following:

"1. To unite in one organization, regardless of creed, color or nationality, all workers eligible for membership employed in and around coal mines, coal washeries, coal processing plants, coke ovens, and in such other industries as may be designated and approved by the International Executive Board, on the American Continent; and if so, state the following:

"(a) During what period or periods did said
page 1331 } constitution so provide?

"(b) —"

Mr. Robertson: Wait a minute.

"Yes, during all the times inquired about."

Mr. Allen: "(b) With respect to the one organization mentioned in the language quoted above, were the members of District 50 at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, a part of this one organization; and if so, during what period or periods?"

Mr. Robertson: "At all times inquired about, members of District 50 were part of the United Mine Workers of America, but retained their identity, membership rights and privileges at all times as members of District 50, all as provided in the Charter of District 50 and Article 20 of the Constitution of the United Mine Workers of America."

Mr. Allen: "(c) With respect to the one organization mentioned in the language quoted above, were the members of United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, a part of this one organization; and if so during what period or periods?"

Mr. Robertson: "Yes at all times inquired about, the members of the United Construction Workers were part of the
page 1332 } United Mine Workers of America, but retained
their identity, membership rights and privileges
at all times as members of the United Construc-

Charter of the United Construction Workers, its rules, and the rules of District 50, and Article 20 of the Constitution of the United Mine Workers of America."

Mr. Allen: "(d) With respect to the one organization mentioned in the language quoted above, were the members of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, a part of this one organization; and if so, during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "With respect to such other industries as may be designated and approved by the International Executive Board mentioned in the language quoted above, what were the designated and approved 'other industries' between the dates October 28, 1948, and August 4, 1949, and what have been the designated and approved 'other industries' since August 4, 1949?"

Mr. Robertson: "Since October 28, 1948, there have been no designations or approvals of other industries."

Mr. Allen: "Question 10: What was the address of the General Offices of United Mine Workers of America in Washington, D. C., between the dates October 28, 1948, and August 4, 1949, and what has been the address of its page 1333 } General Offices in Washington D. C., since August 4, 1949?"

Mr. Robertson: "900—15th Street, N. W., Washington, D. C., at all times inquired about."

Mr. Allen: "Question 11: What was the address of the General Offices of District 50 in Washington, D. C., between the dates October 28, 1948, and August 4, 1949, and what has been the address of its General Offices in Washington, D. C., since August 4, 1949?"

Mr. Robertson: "900—15th Street, N. W., Washington, D. C., at all times inquired about."

Mr. Allen: "Question 12: What was the address of the General Offices of United Construction Workers in Washington, D. C., between the dates October 28, 1948, and August 4, 1949, and what has been the address of its General Offices in Washington, D. C., since August 4, 1949?"

Mr. Robertson: "900—15th Street, N. W., Washington, D. C., at all times inquired about."

Mr. Allen: "Question 13"—

Mr. Robertson: You have to read the other parts to get the whole thing.

Mr. Allen: That is right.

"Question 13: Did the Constitution of the United Mine

Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide that among other objects it was an object of the United Mine Workers of America to do the following:”—

Mr. Robertson: (a), not changed.

Mr. Allen: —“and if so, state the following:

“(a) During what period or periods did said Constitution so provide?”

Mr. Robertson: “Yes, during all the times inquired about.”

Mr. Allen: “(b) Was the above quoted object of the United Mine Workers of America also an object of District 50 at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949; and if so, during what period or periods?”

Mr. Robertson: “Yes, at all times inquired about.”

Mr. Allen: “(c) Was the above quoted object of the United Mine Workers of America also an object of the United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949; and if so, during what period or periods?”

Mr. Robertson: “Yes, at all times inquired about.”

Mr. Allen: “(d) As used in the language quoted above, what is meant by the words ‘joint agreement’?”

Mr. Robertson: “As used in the language quoted, the words ‘joint agreement’ mean the collective bargaining agreements entered into between an employer and the union representing his employees as members of the union. It has no relation whatever to any agreement between the three Defendants.”

Mr. Allen: I believe I omitted something that belongs in that question. I will read it over:

“Question 13: Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide that among other objects it was an object of the United Mine Workers of America to do the following:

“2. To increase the wages and improve the conditions of employment of our members by legislation conciliation, joint agreements, or strikes; and if so, state the following:

"(a) During what period or periods did said Constitution so provide?"

Mr. Robertson: "Yes, during all the times inquired about."

Mr. Allen: "(b) Was the above quoted object of the United Mine Workers of America also an object of District 50 at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949; and if so, during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "(c) Was the above quoted object of the United Mine Workers of America also an object page 1336 } of the United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949; and if so, during what period or periods?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "As used in the language quoted above, what is meant by the words 'joint agreement'?"

Mr. Robertson: "As used in the language quoted, the words 'joint agreement' mean the collective bargaining agreements entered into between the employer and the union representing his employees as members of the union. It has no relation whatever to any agreement between the three Defendants."

Mr. Allen: "Question 14: Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows:

"The International Union shall be composed of workers eligible for membership in the United Mine Workers of America and may be divided into Districts, sub-districts, and Local Unions; and if so, state the following:

"During what period or periods did said Constitution so provide?"

Mr. Robertson: Are you reading (a)? Give (a) and (b) so I can answer.

Mr. Allen: Do you want to answer that before I read (b)?

Mr. Robertson: Yes.

Mr. Allen: All right.

“(a) During what period or periods did said Constitution so provide?”

Mr. Robertson: “Yes, during all the periods of time inquired about.

Mr. Allen: “(b) As used in the language quoted above, do the words ‘Internatonal Union’ mean the United Mine Workers of America and its districts, sub-districts, branches, and subordinate branches, including District 50, and the United Construction Workers; and if not, what do they mean?”

Mr. Robertson: “Yes, during all the periods of time inquired about.”

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Mr. Allen: “(c) Was District 50 at any time between the dates October 28, 1948, and August 4, 1949, operated as a District or sub-district or branch or subordinate branch of the United Mine Workers of America, and has it been so operated at any time since August 4, 1949; and if so, for page 1338 } what period or periods was it operated in each way?”

Mr. Robertson: “Yes, it operated as a District at all times inquired about.”

Mr. Allen: “(d) Was United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, operated as a district or sub-district or branch or subordinate branch of the United Mine Workers of America, and has it been so operated at any time since August 4, 1949; and if so, for what period or periods was it operated in each way?”

Mr. Robertson: “Yes, it was at all times during the periods of time inquired about operated as a division of District 50.”

Mr. Allen: “(e) Was United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, operated as a district or sub-district or branch or subordinate branch of District 50, and has it been so operated at any time since August 4, 1949; and if so, for what period or periods was it operated in each way?”

Mr. Robertson: “Yes, it was at all times during the periods of time inquired about operated as a division of District 50.”

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Mr. Lowden: "Question 15: Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: 'The International Union shall have supreme executive, legislative, and judicial authority over all members and subordinate branches and shall be the ultimate tribunal to which all matters of importance to the welfare of the membership and the subordinate branches shall be referred to for adjustment.' And if so, state the following:

"(a) During what period or periods did such Constitution so provide?

Mr. Robertson: "Yes, at all times inquired about."

Mr. Lowden: "(b) As used in the language quoted above do the words 'International Union' mean the United Mine Workers of America and its districts, subdistricts, branches, and subordinate branches, including District 50 and United Construction Workers, and if not, what do they mean?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Lowden: "(c) Under and by virtue of the language quoted above, did the United Mine Workers within the organization of said International Union have supreme executive, legislative, and judicial authority over District 50 and over the members of District 50 at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, and if so, during what period or periods?"

Mr. Robertson: "Yes, in the manner and to the extent and under the rules prescribed by the Constitution of the United Mine Workers of America."

Mr. Lowden: "(d) Under and by virtue of the language quoted above, did United Mine Workers of America within the organization of said International Union have supreme legislative, executive, and judicial authority over United Construction Workers and over the members of the United Construction Workers at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, and if so, during what period or periods?"

Mr. Robertson: "Yes, in the manner and to the extent and under the rules prescribed by the Constitution of the United Mine Workers of America and the rules of District 50."

Mr. Lowden: "Question 16: Did the Constitution of the United Mine Workers of America at any time between the

dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: 'Between International Conventions the supreme executive and judicial power of the International Union shall be vested in its executive officers and the Executive Board in accordance with and subject to the provisions of this Constitution.' And if so, state the following:

"(a) During what period or periods did such Constitution so provide?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Lowden: "(b) As used in the language quoted above, do the words 'International Convention' mean the International Conventions of the United Mine Workers of America, and if not, what do they mean?"

Mr. Robertson: "Yes."

Mr. Lowden: "(c) As used in the language quoted above, do the words 'International Union' mean the United Mine Workers of America and its districts, subdistricts, branches, subordinate branches, including District 50 and United Construction Workers, and if not, what do they mean?"

Mr. Robertson: "Yes."

Mr. Lowden: "(d) As used in the language quoted above, do the words 'executive officers' mean the executive officers of the United Mine Workers of America, and if not, what do they mean?"

Mr. Robertson: "Yes."

Mr. Lowden: "(e) As used in the language quoted above do the words 'Executive Board, mean the International Executive Board of the United Mine Workers of America, and if not, what do they mean?"

Mr. Robertson: "Yes."

page 1342 } Mr. Lowden: "Question 22: Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: 'All districts, subdistricts, and local unions must be chartered by and shall be under the jurisdiction of and subject to the laws of the International Union and rulings of the International Executive Board.' And if so, state the following:

"(a) During what period or periods did the Constitution so provide?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Lowden: "(b) During what period or periods between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, was District 50 under the jurisdiction of and subject to the laws of the International Union and rulings of the International Executive Board, all as provided in the language quoted above?"

Mr. Robertson: "During all the times inquired about."

Mr. Lowden: "(c) During what period or periods between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, was United Construction Workers under the jurisdiction of and subject to the laws of the International Union and rulings of the International Executive Board, all as provided in the above quoted language?"

page 1343 } Mr. Robertson: At all times inquired about, subject to the Constitution of the United Mine Workers of America and the charter and rules of District 50."

Mr. Lowden: "(d) As used in the above quoted language, do the words 'International Union' mean the United Mine Workers of America and its districts, subdistricts, branches, and subordinate branches, including District 50 and United Construction Workers; and do the words 'International Executive Board' mean the International Executive Board of the United Mine Workers of America, and if not, what do those words mean?"

Mr. Robertson: "Yes, at all times inquired about, yes."

Mr. Lowden: "Question 26: Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: 'The International Executive Board shall have authority to change the boundaries of districts as conditions may require, but the boundaries of self-supporting districts shall not be changed except by vote of the membership affected as determined by the district, a referendum to be taken by the officers of the United Mine Workers of America at any time between the district affected and representatives of the International Union.' And if so, state the following:

"(a) During what period or periods did such
page 1344 } Constitution so provide?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Lowden: "(b) During what period or periods between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did said International Executive Board have authority to change the boundaries of District 50 in accord-

ance with and subject to the provisions of the language quoted above?"

Mr. Robertson: "During all of the times inquired about."

Mr. Lowden: "(c) During what period or periods between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did such International Executive Board have authority to change the boundaries of United Construction Workers in accordance with and subject to the provisions of the language quoted above?"

Mr. Robertson: "Yes, during all the times inquired about, and in the manner and to the extent provided in the Constitution and the rules of District 50."

Mr. Lowden: "(d) As used in the language quoted above, do the words 'International Executive Board, mean the International Executive Board of the United Mine Workers of America, and if not, what do they mean?"

Mr. Robertson: "Yes."

Mr. Lowden: "Question 41: With respect to page 1345 } the privileges, powers, and duties of the International Executive Board of the United Mine Workers of America, did the Constitution of the United Mine Workers at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: 'The International Executive Board shall execute the instructions of International Conventions, and between Conventions shall have full powers to direct the workings of the organization.' And if so, state the following:

"(a) During what period or periods did such Constitution so provide?"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Lowden: "(b) As used in the language quoted above, does the word 'organization' mean United Mine Workers of America and its districts, subdistricts, branches, and subordinate branches, including District 50 and United Construction Workers, and if not, what does that word mean?"

Mr. Robertson: "Yes."

Mr. Lowden: "Question 44: With respect to the International Executive Board of the United Mine Workers of America, did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: 'When the Board is not page 1346 } in session the individual members thereof shall be subject to the direction of the President.' And if so, state the following:

“(a) During what period or periods did the Constitution so provide?”

Mr. Robertson: “Yes, during the periods of time inquired about.”

Mr. Lowden: “(b) During what period or periods between dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, was Thomas Raney, as a member of the International Executive Board of the United Mine Workers of America, subject to the direction of the President of the United Mine Workers of America?”

Mr. Robertson: “Yes, during all the periods inquired about.”

Mr. Lowden: “Question 46: Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: ‘With respect to members in Canada and District 50 the International Executive Board is empowered to modify dues and initiation fee payments with due regard to existing conditions.’ And if so, state the following:

“(a) During what period or periods did such Constitution so provide?”

Mr. Robertson: “Yes, during the periods inquired about.”

Mr. Lowden: “(b) During the periods between page 1347 } between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, did the International Executive Board of the United Mine Workers of America have the power with respect to the United Construction Workers to modify dues and initiation fee payments with due regard to existing conditions?”

Mr. Robertson: “Yes, during the period inquired about.”

Mr. Lowden: “Question 47: Did the Constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: ‘The publication and management of our official journal shall be left with the International Executive Board, which body shall have full power to decide all questions concerning the publication and business management policies thereof.’ And if so, state the following:

“(a) During what period or periods did said Constitution so provide?”

Mr. Robertson: "Yes, during the periods inquired about."

Mr. Lowden: "(b) During the period between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, was this official paper known as The United Mine Workers Journal?"

page 1348 } Mr. Robertson: "Yes."

Mr. Lowden: "(c) Furnish a copy of the issue of The United Mine Workers Journal published next prior to July 26, 1949."

Mr. Robertson: "Copy of The United Mine Workers Journal for July 15, 1949, being the publication next prior to July 26, 1949, is hereto attached."

I am reading that, Your Honor, only to make a complete answer to the question.

Mr. Lowden: "Question 69: What was the street address in Pikeville, Kentucky, of the regional office of Region 58 of District 50 between the dates October 28, 1948, and August 4, 1949, and what has been the street address in Pikeville, Kentucky, of said regional office since August 4, 1949?"

Mr. Robertson: "Seward Building, Main Street, Pikeville, Kentucky, at all times inquired about."

Mr. Lowden: "Question 70: What was the street address in Pikeville, Kentucky, of the regional office of Region 58 of the United Construction Workers between the dates October 28, 1948, and August 4, 1949, and what has been the street address in Pikeville, Kentucky, of such regional office since August 4, 1949?"

Mr. Robertson: "Seward Building, Main Street, Pikeville, Kentucky, at all times inquired about."

page 1349 } Mr. Lowden: "Question 71: What was the street address in Pikeville, Kentucky, of the office of Thomas Raney, as a member of the International Executive Board of the United Mine Workers of America, between the dates October 28, 1948, and August 4, 1949, and what has been the street address in Pikeville, Kentucky, of that office since August 4, 1949?"

Mr. Robertson: "Seward Building, Main Street, Pikeville, Kentucky, at all times inquired about."

Mr. Lowden: "Question 72: What was the post office box number in Pikeville, Kentucky, of the regional office of Region 58 of District 50 between the dates October 28, 1948, and August 4, 1949, and what has been the post office box number in Pikeville, Kentucky, of said regional office since August 4, 1949?"

Mr. Robertson: "District 50 and the United Construction Workers as such do not have a post office box in Pikeville, Kentucky. Post office box 50 has been the post office box

of District 30, United Mine Workers of America, and Thomas Raney, International Board member, United Mine Workers of America, for some seventeen years, and because of the crowded condition in the post office and it being unable to provide a post office box for District 50 and the United Construction Workers, the post office employees have been placing the mail of District 50 and the United Construction Workers in post office box 50."

page 1350 } Mr. Lowden: "Question 73: What was the post office box number in Pikeville, Kentucky, of the regional office of Region 58 of United Construction Workers between the dates October 28, 1948, and August 4, 1949, and what has been the post office box number in Pikeville, Kentucky, of said regional office since August 4, 1949?"

Mr. Robertson: "District 50 and the United Construction Workers as such do not have a post office box in Pikeville, Kentucky. Post office box 50 has been the post office box of District 30, United Mine Workers of America, and Thomas Raney, International Board member, United Mine Workers of America, for some seventeen years, and because of the crowded conditions in the post office and it being unable to provide a post office box for District 50 and the United Construction Workers, the post office employees have been placing the mail of District 50 and the United Construction Workers in post office box 50."

Mr. Lowden: "Question 74: What was the post office box number in Pikeville, Kentucky, of Thomas Raney, as a member of the International Executive Board of the United Mine Workers of America, between the dates October 28, 1948, and August 4, 1949, and what has been the post office box number in Pikeville, Kentucky, of said Thomas Raney as a member of said International Executive Board since August 4, 1949?"

page 1351 } Mr. Robertson: "District 50 and the United Construction Workers as such do not have a post office box in Pikeville, Kentucky. Post office box 50 has been the post office box of District 30, United Mine Workers of America, and Thomas Raney, International Board member, United Mine Workers of America, for some seventeen years, and because of the crowded condition in the post office and it being unable to provide a post office box for District 50 and the United Construction Workers, the post office employees have been placing the mail of District 50 and the United Construction Workers in post office box 50."

Mr. Lowden: "Question 76: In what capacity or capacities was A. D. Lewis employed by the United Mine Workers of America or District 50 or United Construction Workers

between the dates October 28, 1948, and August 4, 1949, and in what capacity or capacities has he been employed by United Mine Workers of America or District 50 or the United Construction Workers since August 4, 1949? Who employed him in each capacity? For what period or periods of time was he employed in each capacity?"

Mr. Robertson: "Mr. A. D. Lewis during all the times inquired about was employed by the United Mine Workers of America as special representative and among his duties as such was designated as and directed to perform the duties of

Chairman of the Organizing Committee, District
page 1352 } 50, United Mine Workers of America, and Director of the United Construction Workers Division of District 50, United Mine Workers of America, and was appointed by the International President with the approval of the International Executive Board."

Mr. Lowden: "Question 82: In what capacity or capacities was William O. Hart employed by United Mine Workers of America or District 50 or United Construction Workers between the dates October 28, 1948, and August 4, 1949, and in what capacity or capacities has he been employed by United Mine Workers of America or District 50 or United Construction Workers since August 4, 1949? Who employed him in each capacity? For what period or periods of time was he employed in each capacity?"

Mr. Robertson: "At no time during the times inquired about was William O. Hart an employee of the United Mine Workers of America or United Construction Workers. From March 21, 1949, to May, 1950, Mr. Hart was an employee of District 50, the United Mine Workers of America, employed and assigned by the Chairman of the Organizing Committee of District 50 and assigned to work under the Regional Director of Region 58 in the capacity of field representative. In that capacity he served both District 50, United Mine Workers of America, and the United Construction Workers. Since the middle of May, 1950, Mr. Hart has been assigned to and is
working in Region 22, District 50, United Mine
page 1353 } Workers of America, and United Construction Workers. The office of Region 22 is located at Clarksburg, West Virginia."

Mr. Lowden: "Question 83: In what capacity or capacities was H. G. Robinson employed by United Mine Workers of America or District 50 or United Construction Workers between the dates October 28, 1948, and August 4, 1949, and in what capacity or capacities has he been employed by United Mine Workers of America or District 50 or United Construction Workers since August 4, 1949? Who employed him in

each capacity? For what period or periods of time was he employed in each capacity?"

Mr. Robertson: "During the times inquired about Mr. H. G. Robinson (correct name, Harvey J. Robinson) was never an employee of the United Mine Workers of America or District 50. During those times Mr. Harvey J. Robinson was employed by the Director of the United Construction Workers as a field representative and assigned to work in Region 58. In that capacity and as such he was required to serve both United Construction Workers and District 50, United Mine Workers of America, organizations and membership."

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Mr. Lowden: This is Further Interrogatories to the Defendant United Construction Workers, interrogatories that we have marked (5).

page 1354 } "Question 4: Approximately how many persons were members of the United Construction Workers on August 1, 1949?"

Mr. Robertson: "Approximately 46,000."

Mr. Lowden: Reading from Further Interrogatories to the Defendant District 50, which we have marked (6):

"Question 4: Approximately how many persons were members of District 50 on August 1, 1949?"

Mr. Robertson: "Approximately 112,000."

Mr. Lowden: Reading from Further Interrogatories to the Defendant United Mine Workers of America, which we have marked (7):

"Question 4: Approximately how many persons were members of the United Mine Workers of America on August 1, 1949?"

Mr. Robertson: "There is no absolute or currently complete individual list of members of the United Mine Workers of America as of August 1, 1949. As of that date, however, there were approximately 650,000 members of the United Mine Workers of America, of which approximately 30,000 members are located in the Dominion of Canada."

Mr. Lowden: Reading from Further Interrogatories addressed to the Defendant United Construction Workers, which we have marked (11):

"Question 5: With respect to the work which is being performed by Link-Belt Company of Chicago, Illinois, for Inland Steel Company at Price, Kentucky, or Wheelwright, Kentucky, during the year 1949, did Thomas Raney, as an official of the United Mine Workers of America or in any other capacity, attend certain meetings held between representatives of the United Construction Workers or representatives of District 50, United Mine Workers of America, hereinafter sometimes called District 50, and representatives of Link-Belt Company during the months of May, June, or July, 1949, for the purpose of negotiating an agreement by which Link-Belt Company would recognize United Construction Workers or District 50 as the collective bargaining agent for some or all of the employees of Link-Belt Company on said work at Price, Kentucky, or Wheelwright, Kentucky; and in this connection did Thomas Raney, as an official of United Mine Workers of America or in any other capacity, participate in any manner in negotiations with Link-Belt Company; what meetings between representatives of United Construction Workers or District 50 and representatives of Link-Belt Company did Thomas Raney attend; and to what extent did he participate in negotiations carried on with the Link-Belt Company?"

Mr. Robertson: "Mr. Thomas Raney took no part in the negotiations inquired about, except that he arranged the meeting between the negotiators at the request of the general superintendent of the Inland Steel Company for a meeting. The negotiations went on without his presence or participation at some other place."

If Your Honor please, there was an answer here giving the membership of Local Union 778-A which Mr. Mullen stated this morning he wanted me to read.

Mr. Mullen: I didn't state I wanted you to read it.

Mr. Robertson: I won't read it, then. I am through, then.

I will read it anyway just to make sure. Mr. Moore, will you come here and help me find it?

(Off the record.)

The Court: The Court desires to state to counsel for the Defendants that they may read any interrogatories not read by counsel for the Plaintiff, and also the answers, provided the answers are responsive to the question.

Colonel Harris: If the Court please, counsel for the Defendants feel that, to get the full benefit of the objections they made to the procedure followed, we should not waive

them in any way and that we should have to follow what we conceive to be the law on the subject, respectfully reserving the point.

The Court: The Court understands your position.

Mr. Robertson: As far as we are concerned, Your Honor, they can reserve all the rights that they have under those objections and read anything they want, too.

page 1357 } The Court: Gentlemen, are we ready to proceed at ten o'clock, or do we have to have any conferences in the morning?

Mr. Robertson: I think, Your Honor, that we may need a conference. I don't think it will be very long. I think maybe counsel and the Court could get rid of it very shortly this afternoon.

The Court: No, we can't do it this afternoon. There is just so much you can take in one day.

Mr. Allen: If Your Honor please, we would not like to have it understood that we will be foreclosed from reading maybe a few little additional interrogatories tomorrow morning or reading some of the exhibits filed with some of the interrogatories that haven't been read yet. Of course a lot of exhibits were filed with them.

The Court: You wish to reserve that right.

Mr. Allen: Yes.

The Court: Can you gentlemen give me any idea how much time it will take to discuss the other matter that you have in mind?

Mr. Robertson: I would hope less than half an hour.

Mr. Allen: I think half an hour.

Mr. Robertson: I will tell Your Honor that it is how we are going to prove the photostats we are going to put in. It is covered in our trial brief. I don't think it is open to argument.

page 1358 } The Court: Will you gentlemen meet me at nine-thirty tomorrow morning?

Mr. Allen: Yes, sir.

The Court: The Court will meet with counsel at nine-thirty tomorrow morning. Sheriff, you may adjourn Court for the jury until ten o'clock tomorrow morning.

(Whereupon, at 4:45 o'clock p. m. a recess was taken until 9:30 o'clock a. m., Friday, February 2, 1951.)

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Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a special Jury, on February 2, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Colonel Crampton Harris, Counsel for the Defendants.

Also Present: Robert N. Pollard, Jr.

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PROCEEDINGS.

(The following proceedings were had in Chambers:)

Mr. Robertson: Judge, the matter that we had to take up this morning is the introduction in evidence of various photostats from the official publications of these unions and also some of the proceedings from the International Conventions as reported in the Journals. Some of the things that we want to put in, as I understand it, instead of using the photostats we will go right to the Journals which are already in evidence in that big envelope full of copies that we introduced in evidence yesterday.

I would like just to read to the Court the part that we have here in our trial brief—

Mr. Mullen: Suppose you state what you want to do first. There might not be any argument.

Mr. Robertson: All right. State what you have there.

Mr. Mullen: What you want to do and how you want to introduce them.

Mr. Allen: There are numerous copies of the Journal with speeches by Mr. Lewis and resolutions and what-not concerning the subject of autonomy, district and so forth. We would like to point out particular portions of the Journal that we want actually to go to the jury. We wouldn't
page 1361 } like, Your Honor, for a whole Journal to go to the jury unless they want it because we think there is material in those Journals that would probably inflame the jury, rabid speeches about some people, about capitalism, this, that and the other—

Mr. Mullen: Attacks on the Taft-Hartley Act, and so forth.

Mr. Allen: Yes, things like that that we don't think ought

to go before the jury. We would like to read to the jury from the Journals the particular passages.

It might be better to introduce the photostatic copies so there wouldn't be any question about their going before the jury. We also have photostatic copies. Then there are photostatic copies of articles, passages and resolutions and so forth in the Journal that are not in the particular issues that are on file. We would want to introduce them. We will prove them under the rule about compared or examined copies, and we are prepared to show that they were photostated under the supervision of Mr. Bryan, that Mr. Bryan read the originals and he has read the photostats and he can testify that they are correct photostatic copies of the originals. That is in accordance with the rule which is in force in Virginia and was applied in a number of Virginia cases. In other words, these documents were found in a public office, to-wit, the Department of Labor of the United States Government. The statute says those articles and documents may be proven page 1362 } by certified copies to avoid the trouble of a witness taking the witness stand and proving them by examined copies, but the cases say that the statute is simply an additional method of proof and that it does not do away with the old common law method of proof by examined or compared copies.

We of course shall be glad to show to these gentlemen before we offer anything in evidence, exactly what we are going to offer. Whether they would like to see them in advance of offering and look at them and read them over rather than delay the trial by reading them each time is a question that they would have to answer for themselves. According to the report of the pre-trial conference we had some discussion about that and they expressed the opinion—I don't mean to say they are bound by any opinion they expressed there, nor are we—they expressed an opinion it would be satisfactory to them if we could show them to them in advance of the trial. Mr. Bryan some three days before the trial began, four days before the trial, we will say approximately a week before the trial began did send them a great mass of photostatic copies, and they sent them back because they said they did not have time at that late stage to examine them. They may be correct in that. I don't have any—

Mr. Robertson: The number has been greatly reduced.

Mr. Allen: It comes down to the verified page 1363 } copies, whether we showed them to them or did not, we have a right to introduce them even of

we just hand them to them at this moment before offering them in evidence.

Mr. Robertson: It is relatively a very small number there.

Mr. Allen: If you use the Journal itself there will be nothing like as many photostatic copies because there are just numbers of volumes of the Journal and a great many of our photostats are in the Journals which have been filed, and we can use them unless there is some fear that the whole Journal may get before the jury. We want it distinctly shown in the evidence that the jury is not permitted to see all that inflammatory stuff that we have just mentioned.

Colonel Harris: How do you propose to do that, to read to the jury while you introduce the photostats?

Mr. Allen: I thought we would put Mr. Bryan on the stand and hand him the Journal after showing to you the particular part that we want to read, and have him read to the jury the part that we want the jury to get.

Mr. Mullen: I see a difficulty there. So far as the law is concerned, I think for once these gentlemen have stated it all correctly as to proof—

Mr. Allen: What is that?

page 1364 } Mr. Mullen: I say for once I think you all have stated the law correctly, that they can be proven by certification of a witness that he has compared them with the originals and the source from which they came and has compared them. I think that is the correct law.

The difficulty is going to be that there were somewhere between 300 and 500 documents sent to us. The first I understand were sent on Saturday the 13th. Then there were others sent on Monday, Tuesday and Wednesday, and it was a physical impossibility to read them at that date. We had only three days before the trial then.

Mr. Allen: We don't expect to introduce anything like 300 to 500.

Mr. Mullen: Of course anything like that that they are going to introduce we ought to read them and see whether they are open to objection as being relevant or not relevant. It is going to take a lot of time if anything like you all had there is to be introduced or if you are going to introduce portions of the proceedings of the National Conventions, some of that may be and some may not be. The Journals attack not only the Taft-Hartley Act but various other acts of Congress, and we don't have in issue in this case what is the unions policy as to law, and so forth, and it is going to be difficult to weed it out. The full Journals should not go to

the jury, of course. All of them have a cartoon page 1365 } on the front page. I showed you one, Your Honor, criticizing Byrd and Smith and so forth. Those things would be highly inflammatory. How to weed them out, any official pronouncements in those papers I suppose are competent evidence.

Mr. Robertson: I don't think there will be any difficulty.

The Court: I wonder if you gentlemen couldn't agree to clip the portion that you propose to introduce into evidence from the copies.

Mr. Mullen: That is what I thought was going to be done away back when we were talking about it.

The Court: And not let the jury see the whole Journal.

Mr. Robertson: As I understood it that is exactly what we propose to do. For instance, when I introduced those things yesterday, I was very careful to stand so that the jury could not see those cartoons or what was in there. Any of those that are already in evidence, where the journal is in evidence, if there is anything relevant to this particular case, my understanding is that we will turn and read that to the jury and then we could put a photostat of what was read in as an exhibit in the case but not let the whole thing go to the jury. I agree with Mr. Mullen completely.

Mr. Mullen: Do you have a photostat in each page 1366 } case of what you want to put in?

Mr. Allen: Yes.

The Court: If you gentlemen would agree to that that would simplify matters.

Mr. Robertson: I think it would be reversible error to let all that go to the jury.

Mr. Bryan: The front sheet is usually the sheet that has the volume number and issue number and the date. Without that, there is no way to identify the articles as being from any particular issue.

The Court: You could put on photostatic copy, Volume 10, so and so.

Mr. Allen: Why couldn't you do this, Judge: For instance, if we are going to introduce them through Mr. Bryan, let him state the volume and the number and the date and then say the article can be found on page so and so and then offer a photostat.

Mr. Robertson: And identify the photostat as the Court said.

Mr. Mullen: In that way the reporter will have it identified in the report. I am not trying to prevent them from introducing anything that is proper, but I was just appalled at the

mass of it, and I could see us sitting here for a week or so longer while they were trying to get that in. I was just trying to see what could be done.

page 1367 } The Court: How many of these copies do you propose to introduce?

Mr. Allen: I can't tell, Your Honor. It will be nothing like what we delivered to Mr. Mullen. I will say that that was the very best we could do then under the circumstances. We had promised to deliver them to him. In the preparation of this case, we have had to divide the work to a certain extent, and it has been impossible for us at times to get with Mr. Bryan and go over and weed out these photostats that we didn't want to introduce. We had not had time to do it up to that time and the best we could do was just to let him deliver the whole to Mr. Mullen. We regret that we had to do that, but we just had not had the time at that time to weed them out. Now we have. It will not take a great length of time, and we can point out to counsel on the other side exactly what we are going to offer and the particular article and the particular part of it. If they object to a part of the article without all of it, we will not raise any question, we will say let it all go in. It will be up to them to say whether they want all of a particular article or not. We can decide then before it is even offered before the jury. If they say we want all of this article and not just a paragraph of it, we will say all right, let it go in.

Colonel Harris: As I understand it, we are discussing the sufficiency of the predicate and not the inherent page 1368 } admissibility of any particular article.

Mr. Robertson: That is right. As I understand, no point is raised that these are correct copies, but you reserve all rights to object to the introduction of any of them.

Mr. Mullen: I don't know whether it is stated exactly right. We are not objecting to that method of proving, on other words, by Mr. Bryan. We are not saying right now that it ought to go in yet.

Mr. Robertson: I say you reserve every right to try to keep them all out.

Mr. Mullen: What we will not object to is the method of proof that they are proposing. I don't know, they might not even offer some items that I saw in there that I certainly would object to. You may not offer them, I don't know. I didn't glance at more than half a dozen. I was working on this case in some other phases at that time.

I suppose the only thing is to let them offer them one by one. It is going to take time. We will have to read them.

Mr. Allen: Would it be better, Your Honor, to do that in

the absence of the jury so that when we come to the jury then we can go right along? It may be that some of them they will object to, we may think we have it somewhere else in the record and we may agree not to introduce them.
page 1369 } We are not definitely committed yet to insist finally on a certain number, but there are certain of them that we shall insist upon. Others, if objected to, we may waive our right to introduce them.

Mr. Mullen: Have you any idea how many?

Mr. Allen: We may offer them anyway for the record in the Court of Appeals but if the Court rules them out, we will let you initial them under the rules and they will be part of the record in the Court of Appeals. I don't think we are going to have any great trouble in getting together on exactly what is going to be introduced because we have a specific object in mind in introducing these photostats from the Journal and from the constitutional conventions, and so forth.

The Court: We have the jury coming back at ten o'clock this morning.

Mr. Robertson: Why don't we start that way and see how we get along. If it looks like we would get along better a different way, we can change.

Mr. Mullen: Do you know a better way of trying it?

Colonel Harris: I don't know another way.

Mr. Mullen: All right.

Now let me ask concerning one or two matters. We asked Mr. Bryan to give a list of his laborers on the Hopewell job at—what was the year, '47 or '48?

page 1370 } Mr. Bryan: Mr. Harris asked me how many laborers we had, and I told him I didn't know. Since that time I have looked and it was about 35 or 36 at that time. He also asked whether or not there had been an increase in the wage rate at about that time, and I find that the wage rate for laborers was increased in June, 1948, from 75 cents an hour to 90 cents an hour, and that there hasn't been any change in that rate since June, 1948, until the last week or so.

Mr. Mullen: Was it '47 or '48 the year we were talking about?

Mr. Bryan: '48. I talked to Mr. Fold. In October or the first of November, 1948, there was no question of wages on that. He asked how many laborers we had and it was impossible for me to say then.

Mr. Mullen: I thought there would be something in your payroll.

Mr. Bryan: I told him I would have to look at the payroll to find out how many there were, and since that time I have done it.

Mr. Mullen: Another thing, the CPA that we have, Mr. Holt. As a special favor to me, they took him off a job Friday, Saturday and Sunday. We had him ready to go Friday. On Saturday he went, and the result of that has already been stated in the Court. The only time we can get him is Sunday.

Will somebody be there Sunday?

page 1371 } Mr. Bryan: We will have somebody down there, Mr. Mullen.

Mr. Mullen: CPA's are hard birds to get.

page 1372 } The Court: They are working on income taxes now.

Mr. Mullen: They are working on income tax, annual reports, and so forth.

Mr. Allen: One other word about these photostats, Your Honor. Mr. Moore and myself the other night spent several hours going over those photostats with Mr. Bryan. We concluded that there are quite a number of photostats there that we would want in the record for purposes of the record, that we don't care to read to the jury. I am wondering if we might not offer them in evidence, and then say we do not care at this time to read them; the record will show they were never read. We want them in there for certain purposes of law if the case gets to the Court of Appeals.

Colonel Harris: At first blush, it seems to me that that is running a double case: one case to the jury, and a different case off in another channel for the Court of Appeals. It seems to me it is just one case.

The Court: It strikes me that you must offer them or not. This Court is entitled to all the information that it can properly get, in order to determine the issues involved, and I don't think you can by-pass this Court.

Mr. Allen: This Court would have it before it on purely legal questions. Some of them, I take it, the jury wouldn't have anything to do with. They involve questions of law.

Let me illustrate this, which is certainly im-
page 1373 } portant. It shows exactly what we contend.

Some years ago one of the unions out here, one of the local unions, brought a suit against the Mine Workers, the International Union, to prohibit the International Union from revoking the local union's charter without a hearing, and the Court—I think the case is reported in 158 or 258, called the Fishwick case. It is reported in that volume of the Illinois Reports. The Court held that under the Mine Workers' charter as it existed at that time, they couldn't do that.

To meet that decision they amended their charter so as to

give the Mine Workers, the International President or International Board or the main union, the right to revoke those charters; gave them much more power over the local unions than they had before that.

Then another case came up later on, with the constitution amended, and they held they did have complete power over the union to revoke the charter, as they had not before.

The jury has not a thing in the world to do with that, and Your Honor could use it on a motion to set aside a verdict or a motion for instructions, and the like. All that is in those journals, and it shows the purpose of the amendment.

The Court: If it is before this Court, can't the Supreme Court consider it also?

Mr. Allen: Certainly it can do it. That is page 1374 } why I say we want it before this Court. We can't get it before this Court without offering it. It certainly is not a proper matter to go before the jury; but in our arguments on instructions and certainly on motions to set aside a verdict before Your Honor, we would want that in the record. Even if Your Honor rejects it, under the law as it stands now you initial it, and it would still be a part of the record.

Colonel Harris: Judge, we are unfamiliar with any two-lane highways for the trial of litigated cases. There is one road that you follow.

The Supreme Court could very well say, if you followed their plan, "that is a moot question; it did not go before the jury." I don't think they can attempt to educate the Court in an off-the-record, out-of-court proceeding. We are in one trial here, and everything that happens here is reviewable.

I haven't had a chance to confer with Mr. Mullen, but personally, I am not willing to start splitting the case up and say, "Here is a part for somebody to use on appeal, and here is a part to use on appealing to the jury."

Mr. Mullen: What do you propose to put in on that point?

Mr. Allen: I will show you. And if they object to, Your Honor, and Your Honor sustains the objection, page 1375 } we will just take an exception. That will satisfy the record for our purposes. It will be before Your Honor then, and in the record for the Court of Appeals, too.

Mr. Mullen: Do you propose to put in the decision of the Illinois Court?

Mr. Allen: No, we don't propose to do that. What we propose to show is the difference in the constitution when those cases were decided, and the difference in the constitu-

tion when the Coronado case was decided, and at this time. It appears clearly in the Journals, and the purpose for which the amendment was made.

Mr. Mullen: You are acting under the present constitution.

Mr. Allen: That is right.

Mr. Mullen: I question whether those earlier constitutions are competent or relevant evidence.

Mr. Allen: They are not competent evidence before the jury, but they are certainly competent evidence in our arguments before the Judge and in arguments before the Court of Appeals. How are we going to get the earlier constitutions in evidence so we can argue before His Honor here and argue before the Court of Appeals, unless they are introduced?

The Court: Do you propose to introduce that evidence in the absence of the jury?

Mr. Allen: Yes, that is right. That is ex-
page 1376 } actly what it would amount to.

Mr. Mullen: Yet you argued here earlier that everything—of course, you are doing that to show agency—that everything that shows anything indicating agency will properly go before the jury.

Mr. Allen: The present constitution has been introduced in evidence; the Rules of District 50 have been introduced in evidence, but as yet none of it has been read. We probably will read some sections from it. So it comes right back to the same thing. His Honor struck the nail on the head when he said it would be introduced before His Honor in the absence of the jury. We want it in the record because we feel it is very material on certain questions of law; and if we don't have the facts somewhere in the record, facts that are really not proper to go before the jury but are proper to be considered in connection with the law of the case—

The Court: Let's discuss that point further and give these gentlemen a chance to think it over. We will all think it over.

Mr. Mullen: I think it a very novel proposition.

Colonel Harris: It seems to me that what they are attempting to do is to make their legal arguments a part of the record, and I personally do not see how we could ever consent to have something introduced in evidence and not go before the jury. If it is in evidence, the purpose of
page 1377 } putting it in evidence is for the jury.

Mr. Robertson: Judge, haven't you already hit the nail on the head there? Isn't the way to expedite matters now to go ahead and introduce what we are going to introduce before the jury, and hold your ruling on the other in abeyance until everybody has thought it over?

The Court: That is a point that we should all give consideration to. You don't propose to offer any evidence in that respect in the immediate future, do you, today?

Mr. Allen: Yes. We were going to try to conclude our case today with that sort of evidence.

The Court: Yes, but I mean not this morning.

Mr. Allen: No, sir. We were going to read these photostats from the Journal and a few more interrogatories that we omitted yesterday, and that sort of thing.

The strict legal situation with reference to the practice is this; It doesn't make any difference what we offer, if they think it is objectionable they object to it; and if Your Honor sustains their motion, which I take it you would in reference to some of this because it is not proper for the jury, then we would take an exception, you would initial it, and it thereby, under the rules, becomes a part of the record for use by Your Honor and for use by the Federal Court.

Mr. Robertson: The way you could hit that page 1378 } promptly is to offer it during the course of the proceedings, and the Court would look through it enough to see that it was irrelevant and throw it out, and we take our exception. I don't see any mystery about how we are going to proceed. You offer whatever you want to offer, and the Court rules it out, and there is the end of it for jury purposes. It looks to me like we are talking all over the lot, to no purpose.

Mr. Mullen: Mr. Allen, you are arguing now the point that if I ask a question of the witness and an objection is sustained to it, then I can have the jury go out and have the answer go in the record.

Mr. Allen: Yes, but I wouldn't want to put you in that position of continually objecting and the Judge—

Mr. Robertson: Why couldn't we do it this way? All I want is to try to expedite the thing. Let me make my suggestion, because I think there is a very good chance to finish our case-in-chief today. Suppose that Mr. Allen offered this thing and you glanced through it, and don't have any argument or anything. Then you say it is objected to, and I ask the Court to mark it Plaintiff's Exhibit No. so-and-so (Excluded), and it is laid aside, and we go on to the next one.

Mr. Allen: Then it is in the record.

Mr. Robertson: I don't think even the Court has a right to stop us from that. I think it is the way to go page 1379 } fastest with least friction.

Mr. Mullen: All right. We will try it that way. We want to expedite it as much as we can, because if Your Honor is going to adjourn the jury on Monday, we don't

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want to go beyond that and use the one day we were promised.

Mr. Robertson: You have one day, under our agreement, whenever it is.

The Court: These gentlemen are going to try to cooperate with the Court as much as they can, as they have in the past. If they don't need that day, I am sure they won't ask for it.

Mr. Mullen: If they finish today, we will certainly take it.

page 1380 } (The following proceedings were had in open court:)

(Roll call of the Jury.)

The Court: Mr. Robertson, would you and Colonel Harris, or one representative from the other group, mind coming around behind the bench just a second!

(Conference at the bench out of hearing of the Jury.)

Mr. Allen: Mr. Mullen, we shall offer that first. (Exhibiting photostat to Defendants' counsel.)

Mr. Mullen: Do you offer this?

Mr. Allen: We are going to offer that first.

Mr. Mullen: We are going to object. Go ahead and make your offer, and we are going to object.

Whereupon,

ALEXANDER HAMILTON BRYAN

recalled as a witness for Plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION.

By Mr. Allen:

Q. Mr. Bryan, have you a photostatic copy showing the geographical extent of the United Mine Workers and District 50?

A. Yes, sir.

Q. Where did you get it from?

A. Pages 4 and 5 of the District 50 News, page 1381 } United Mine Workers of America, Volume 1, Issue No. 19, dated August 15, 1942. The original is on file at the U. S. Department of Labor Library in Washington.

Alexander Hamilton Bryan.

Q. I hand you what purports to be a photostatic copy. Before offering it in evidence, I will ask you if you know whether or not it is a photostatic copy?

A. Yes, sir, the photostat was made under my supervision, and I compared it.

Q. You examined the original and the photostatic copy, both?

A. Yes, sir.

Q. You know that it is a correct copy?

A. Yes, sir, it is a correct copy. It was examined either by me or under my direct supervision.

Mr. Allen: Suppose, Your Honor, we pass it up and let Your Honor see it so you will know what it is.

Mr. Mullen: If Your Honor please, we object to the introduction of it. It uselessly encumbers the record, it is too remote from any issue in this case, and it is prejudicial.

The Court: What is your reply to that, Mr. Allen?

Mr. Allen: The importance and materiality of that, Your Honor, is this: It shows that District 50 is different from the ordinary District, in that both geographically and jurisdictionally, so far as area is concerned, District 50 is co-extensive with the United Mine Workers of America. page 1382 } It shows that there isn't a spot or area covered by the United Mine Workers of America that isn't covered by District 50. We think it is material and important in that respect.

Mr. Mullen: There already has been testimony as to that, Your Honor. This is just useless encumbrance of the record.

In addition to that, that has a lot of explanations, and so forth, on it that are not proper.

Mr. Robertson: If Your Honor please, that is a graphic illustration of the evidence, which we think is most helpful to the jury. When you are not printing any exhibits, if you ever have to go anywhere else, it is not encumbering the record.

Mr. Allen: I want to see if there is anything objectionable on it, since Mr. Mullen has called attention to something. Will you point out specifically what you think is objectionable, Mr. Mullen?

(Discussion off the record.)

The Court: Do you gentlemen have any further observations to make?

Alexander Hamilton Bryan.

Mr. Allen: About this exhibit?

The Court: The first exhibit offered.

Mr. Allen: No, sir. We think it is material and relevant, and would like to have it go before the jury.

The Court: The objection is overruled. Note page 1383 } an exception.

Mr. Robertson: We ask that the Reporter mark it Plaintiff's Exhibit No. 63.

(The document referred to was marked Plaintiff's Exhibit No. 63 and received in evidence.)

Mr. Allen: We think, if Your Honor please, we would save time by a short adjournment to get together exactly what we want to offer, in precise form, and show it to these gentlemen; and then if they have objections, let them state them, and then we can go right along in a hurry.

My associates here seem to concur in that view, and we believe we would save time.

The Court: Do you want to recess a few minutes?

Mr. Allen: Recess a few minutes, and get it together and show it to these gentlemen so that we can get right along.

The Court: All right, let's recess for a few minutes.

(Brief recess.)

The Court: Gentlemen, it is apparent to the Court that I am going to have to do considerable reading in connection with the photostatic copies which will be offered in evidence, and in order to save you some time and to keep you from waiting around, the Court will recess until 2:15. I will meet with counsel in Chambers and try to be ready by then.

(Whereupon, at 11:00 o'clock a. m., the jury was excused until 2:15 o'clock p. m. of the same day.)

page 1384 } (The following proceedings were had in Chambers:)

(Discussion off the record.)

The Court: What do you gentlemen want to say on this? What do you want to put in the record?

Mr. Allen: We offer the article headed "Charter of District 14 is suspended by President Lewis," taken from page 7,

Alexander Hamilton Bryan.

Volume 32, No. 20, issue October 15, 1921, of the United Mine Workers' Journal.

The Court: Are you through, Mr. Allen?

Mr. Allen: Yes.

The Court: Mr. Mullen?

Mr. Mullen: We object to the introduction of the item in evidence on the ground that it relates back to 1921 and was action taken under a constitution then in effect different from the constitution in effect at the time of the happening which is the basis of this suit. For that reason it is not relevant evidence.

Mr. Robertson: The Plaintiff wishes the record to show that this entire line of testimony is offered as being relevant and admissible upon the theory that the existence of the power of the International Union over District 50 and United Construction Workers appears from the constitution of the International Union already introduced in evidence. The Plaintiff is now showing the exercise of that power by the International

Union through its president, International Executive Board, and International Convention. page 1385 }

Such authority having been exercised in increasing measure, continuously, uniformly, repeatedly from 1921 down to the present time in increasing measure to such effect that it shows a pattern, design, plan, and practice of despotic control, and wherever during the intervening years the power of that control has been questioned, the constitution has been amended to increase the despotic control, and this entire line of evidence is one phase of such proof.

The Court: Do you want to add anything to the record, Colonel Harris?

Colonel Harris: I understand that the objector has the opening and the closing of the argument on his objections, and not the offerer of the testimony. I make that statement in view of the statement made by Counsel a while ago that they thought they had the last say, and that may become important.

If the Court pleases, there is necessarily a limit on the area covered by a trial. As we see it, it cannot possibly be relevant or material to enter into everything that has happened in the history of the United Mine Workers of America since the day the union was organized. The constitution that was in effect is in evidence. The existence of the power is the question. We have not denied the existence of the power.

Alexander Hamilton Bryan.

Th exercise of a different power under a different constitution we submit would not throw any light on the question now before this Court and needlessly encumbers the record.

The Court: The objection is overruled.

Colonel Harris: We note an exception.

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The Court: Let the record show that the Defendants may have their objection and exception without having to repeat the same before the jury.

Mr. Robertson: I think you have a right to repeat it before the jury because I don't think it is fair to you to sit silent in the presence of the jury.

Mr. Mullen: When the article is offered in evidence before the jury, counsel for Defendant will object, stating that they object for the reasons heretofore stated and of record in this case. Neither one will argue reasons for doing the thing.

Colonel Harris: And that we be given an exception to each ruling without the necessity of saying every time before the jury we note an exception.

Mr. Robertson: No, I think if you are going to get the benefit I think you ought to take the burden. If page 1387 } you want to repeat your objection you ought also to repeat your exception.

Colonel Harris: We will do it then.

Mr. Mullen: I don't think there will be any trouble doing that.

(The document referred to was marked Plaintiff's Exhibit 64 and received in evidence.)

(Discussion off the record.)

Mr. Allen: We offer in evidence from the Secretary-treasurer's report in the United Mine Workers Journal, Volume 25, No. 37, January 20, 1916, article entitled "What we owe, to whom we are in debt, and why."

Mr. Mullen: If Your Honor please, we object to this item now offered, "What we owe, to whom we are in debt, and why," which is a record in 1916 before either District 50 or UCW were ever organized or were in existence. It certainly can't have any bearing on the control or the actions of the International Union with reference to something that didn't

Alexander Hamilton Bryan.

exist at the time. It is simply an article about having to borrow money and having to get it from their subordinate unions for defense work and so forth which they had to do. We submit that it relates to unions that were not even in existence at the time and can have no relevancy here.

The Court: All right, gentlemen?

Colonel Harris: May I add also on the ground page 1388 } of immateriality and on the further ground that

Your Honor has heretofore ruled that questions of financial condition should not be taken up. This is an effort to show that they were in debt 35 years ago for the purpose of making some comparison later on in the case.

Mr. Allen: All we desire to read here, if Your Honor please, is this:

"All these loans, however, were secured from subordinate branches of our organization, from districts that had builded up defense funds and who cannot doubt that the money spent in Colorado and eastern Ohio has been used in defense of the institutions we all profess to uphold. We are in debt, then, to ourselves. True, the burden has for the time being fallen on only those who in the past have laid by for a rainy day and in time these debts will be paid by all the members of our organization collectively."

The only purpose of that is to show that they regard all of the unions as one big union. "We are in debt, then, to ourselves."

Colonel Harris: We call the Court's attention to the highly prejudicial reference to "Colorado".

Mr. Robertson: We withdraw it.

The Court: It is withdrawn.

(Discussion off the record.)

Mr. Allen: We offer the following paragraphs page 1389 } from page 11 of the United Mine Workers Journal dated November 1, 1922, Volume 33, No. 21, headed "Executive Board Restores Autonomy of District 14 and Orders an Election."

"The international executive board at its meeting at headquarters voted to restore the autonomy of District 14 and ordered a district convention held. The convention call was

sent out by the provisional officers of the district to meet on October 25 at Pittsburg, Kan."

* * * "Just who will be candidates for district officers remains to be seen. Neither George L. Peck, provisional president, nor Thomas Harvey, provisional secretary will be candidates, they have announced. President Peck will continue to act as provisional president until January 1, when the new officers to be elected on December 12, take their seats."

Mr. Mullen: Your Honor, we object to that on the ground, in the first place, that it is so remote in time that it has no bearing on the present controversy or conditions existing at the present time, and it is merely two detached paragraphs out of a whole article. It is not relevant here. It relates to District 14, which is one of the coal mining districts. At that time neither one of the other unions was in existence, and the power that it has over the coal miners is different from what it has over District 50 and U.C.W. It is all governed by the constitution and rules that have page 1390 } been put in evidence. I can't see that this is material, and relevant.

Mr. Harris: And all the grounds stated by both Mr. Mullen and myself to their first offer, which were overruled, and also the grounds stated to their second offer, which they withdrew.

Mr. Robertson: If Your Honor please, I will be very brief, and I think this may save some time here.

That is exactly the same objection that they made before, and we offer it for exactly the same purpose as stated before. One additional purpose is to show the Godlike quality of John L. Lewis. The Lord giveth and the Lord taketh away. The other time he destroyed autonomy. This time he gives it back again. Blessed be the name of the Lord.

Mr. Mullen: The article is headed "Executive Board Restores Autonomy * * *," not John L. Lewis.

The Court: What does the second paragraph have to do with it, which reads: "Just who will be candidates for district officers remains to be seen * * *."

Mr. Robertson: I don't think it has anything to do with it.

The Court: Neither do I.

Mr. Allen: They were permitted to elect their own officers at that time and the provisional officers wouldn't be candidates, that is all. It shows they were given the page 1391 } right to elect their own officers, a right which District 50 hasn't got.

The Court: The Court will grant the motion as to the first paragraph and overrule the motion as far as the second

paragraph is concerned, which is marked with red crayon.

Colonel Harris: We note an exception to the adverse part of the ruling.

Mr. Mullen: You are not offering anything more in that one?

Mr. Moore: No, sir.

(Discussion off the record.)

(The document referred to was marked Plaintiff's Exhibit 65 and received in evidence.)

Mr. Allen: We also offer in evidence from United Mine Workers Journal Volume 33, No. 21, dated November 1, 1922, page 13, the following: "Autonomy of District No. 19 Suspended by Executive Board."

"The international executive board in session at Indianapolis on October 20, adopted a report of the committee on organization, suspending the autonomy of District 19.

"President Lewis was directed to suspend the autonomy in conformity with the board's action and sent the following communication to the officers and members of the district:

"To The Officers and Members of District 19, page 1392 1/2 United Mine Workers of America.

"Greeting:

"You are hereby officially advised that the International Executive Board in session at Indianapolis, Indiana, on October 20th, adopted the report of the Committee on Organization with respect to District 19, reading as follows:

" "The affairs of District 19 are in a chaotic condition due to serious internal differences and also to the evils resulting from the economic depression. It is more than apparent from the evidence adduced and in possession of your Committee that a more definite policy should be followed in that district and that its administrative affairs should be placed on a more stable basis. Your committee, therefore, recommends that effective November 1, 1922, the autonomy of District 19 be suspended and the district placed under the authority of provisional officers responsible to the International Union. The International President is directed to apply this policy."

"In consideration of the foregoing action, the autonomy of District 19 is suspended and all offices within the district declared vacant effective November 1, 1922. The International Union exercising its constitutional authority, will create a provisional district to take complete charge of the affairs, property and funds of District 19, effective from the date of the suspension of autonomy * * *."

Mr. Mullen: We object to that, Your Honor, page 1393 } on the same grounds as stated with regard to the item already read from this issue of the paper. I don't think it necessary to repeat them.

Mr. Moore: They give it away in one and take it away in the other.

The Court: The objection is overruled.

Mr. Mullen: Exception is noted.

(The document referred to was marked Plaintiff's Exhibit 66 and received in evidence.)

Mr. Allen: We now offer in evidence from pages 3 and 4 of the United Mine Workers Journal, Volume XXXIV, No. 15, article headed "President Lewis Revokes Charter of District 26 and Orders Striking Miners Back to Work."

"President Livingstone defies order of international union, whereupon he is summarily removed from office with other district officials. Reports show big percentage of men returned to work after autonomy of district was suspended.

"President John L. Lewis, in a telegram to Daniel Livingstone, president of District 26, Nova Scotia, revoked the charter of the district and denounced Livingstone for his defiance and violation of the constitution and authority of the international union.

* * * * *

"Under the order issued by Mr. Lewis the page 1394 } autonomy of the district was suspended and the authority taken over by a provisional government."

And on page 4, from a telegram signed by Mr. Lewis:

"By virtue of the authority vested in me by the constitution of the United Mine Workers of America, of which I am President, and in consideration of the further authority granted in the premises by the International Executive Board, I, herewith, advise that the charter of District 26,

United Mine Workers of America, stands revoked, effective this date. Under this action District 26 ceases to be an entity and you are automatically deprived of your office as President thereof. Alexander McIntyre, Vice-President, and J. B. McLachlan, as Secretary-Treasurer, likewise have their offices vacated through this same precise action. All members of the Executive Board of District 26, including any and all other officers of said District are in like manner automatically removed from office and can no longer undertake to represent in any capacity the United Mine Workers of America. This applies with equal force to Alexander Stewart, Member of the International Executive Board. Under separate order I am today creating a Provisional District to function within the jurisdiction of former District 26, under the direct authority and control of the International Union. International Representative Silby Barrett, of Glace Bay, Nova Scotia, has been designated as Provisional President thereof
page 1395 } with sweeping authority to function in every capacity."

Mr. Mullen: Are you offering that?

Mr. Allen: Yes.

Mr. Mullen: If Your Honor please, I object to that. It is disjointed extracts from—has Your Honor seen it?

The Court: No, I haven't.

Mr. Mullen: It is disjointed extracts from an account of a proceeding which was taken pursuant to action of the International Executive Board, and it sets out throughout what the controversy was, which shows the basis and justification for this action.

The telegraphic order sent to President Livingstone by President Lewis, he picks out simply one part of one paragraph in that. I think that, cut up like that, it doesn't show the whole picture, and it again is a matter going back prior to the existence of either United Construction Workers or District 50. It was under a different constitution, and it is not proper to be admitted here and is not relevant testimony.

Colonel Harris: And all the other grounds of objection that we interposed.

Mr. Mullen: Yes.

Mr. Robertson: I think that is the same objection, in what Mr. Mullen has said there. The only thing new goes to the weight of it rather than the admissibility of it.
page 1396 } The Court: Do you gentlemen have anything further you want to say?

Mr. Allen: It uses the term "provisional," and shows what is meant by the term "provisional district."

Mr. Mullen: I think, Your Honor, it doesn't make sense to cut an article up like that, which is all on one subject, just to select a sentence here and a sentence there.

Mr. Allen: Do you want the rest of it?

Mr. Mullen: I am not asking for anything. I am objecting to it in the form it is.

Mr. Robertson: We offer it in the form it is, and if they want it they can offer the rest of it, and let the record show that.

The Court: The Court will overrule the objection and allow it for what it is worth.

Mr. Mullen: We note an exception.

(The document referred to was marked Plaintiff's Exhibit No. 67 and received in evidence.)

* * * * *

Mr. Allen: We now offer in evidence the following headlines and extract from page 4 of the United Mine Workers Journal, Volume XXXV, No. 24, December 15, 1924: Headline reading, "Charters of 10 Insubordinate page 1397 } Local Unions Revoked by President Lewis in District 1."

"Charters of ten local unions of the United Mine Workers of America in the Pittston district, District 1, were revoked by President Lewis, following the refusal of the men to return to work pending the settlement of grievances held against the Pennsylvania and Hillsdale Coal & Iron Company."

Mr. Mullen: We object to it for the same reasons heretofore stated.

Mr. Robertson: We offer it for the same purpose.

The Court: The objection is overruled.

Mr. Mullen: Exception noted.

(The document referred to was marked Plaintiff's Exhibit No. 68 and received in evidence.)

Mr. Allen: We now offer in evidence from page 8, United Mine Workers Journal, Volume XI, No. 12, June 15, 1929, article headed, "President Lewis Revokes Charter of Sub-District No. 9 of District No. 12 for Insubordination of Officials."

We offer so much of that article as I shall now read:

"President John L. Lewis of the United Mine Workers of America, has revoked the charter of Sub-District 9, District 12, which is the local organization of the United Mine Workers of America in Franklin county, Illinois.

page 1398 } "This action was taken because of the insubordination of the officers of this sub-district to the laws of the United Mine Workers of America and the rulings of the international executive board. The action of the president's office dissolves the sub-district organization, as such, and creates in lieu thereof a provisional sub-district organization, of which John T. Jones, of West Frankfort, Illinois, is named president; John Belcher, of Zeigler, Illinois, vice president, and John Brown, of West Frankfort, Illinois, secretary-treasurer.

"President Lewis addressed the following communication to the retiring officers of the sub-district:

"Indianapolis, Ind., June 8, 1929.

"Mr. D. B. Cobb, president: Mr. Heza Hindman, vice president; Mr. Ed Loden, secretary-treasurer; Mr. Ed Rich, Mr. Glenn Malone, Mr. Luther Elliott, Mr. W. F. James, Mr. Luke Corley, members executive board; Sub-District 9, District 12, United Mine Workers of America, West Frankfort, Illinois.

"Dear Sirs and Brothers:

"The officers of Sub-District 9, District 12, United Mine Workers of America, are insubordinate to the laws of the United Mine Workers of America and the rulings of the international executive board. Pursuant, therefore, to the authority vested in me by the constitution of the United Mine Workers of America, I hereby revoke the charter of Sub-District 9, District 12, United Mine Workers of America, effective this date. This action dissolves the Sub-District, as such, and vacates all offices appertaining thereto, either elective, appointive, secret or otherwise.

"A provisional sub-district has been created and this office is designating Mr. John T. Jones, of West Frankfort, Illinois; Mr. John Belcher, of Zeigler, Illinois, and Mr. John Brown, of West Frankfort, Illinois, as the provisional officers of Provisional Sub-District 9 District 12."

Colonel Harris: Will the Court permit us to add as an additional ground of objection to all objections made this morning in the absence of the jury, two more:

First, that you cannot prove the power of an agent by the declaration of the agent.

Second, you cannot prove the power and authority of an agent or agency by either the declarations or the conduct of the agent or agency.

Mr. Robertson: We are taking this out of their official Journal, of course. It goes along with the other facts and circumstances in the case to determine whether he is authorized to act.

The Court: You may be permitted to add those objections, Colonel Harris.

Colonel Harris: Thank you.

page 1400 } Mr. Mullen: They will be added to the previous objections, and will apply to the article now offered. And again, we want to emphasize that they are unrelated extracts from a total article.

Mr. Robertson: We wish the record to show that we invite the Defendants to read the entire article, and have no objection to any part of it that they choose so to read.

Colonel Harris: And we decline the invitation, for the reason that if we conceive evidence to be inadmissible, we can't be put in the position of offering still more inadmissible evidence.

The Court: The Court overrules the objection.

Mr. Mullen: We reserve an exception.

(The document referred to was marked Plaintiff's Exhibit No. 69 and received in evidence.)

Mr. Allen: We now offer in evidence what I shall presently read from Volume XL, No. 20, of United Mine Workers Journal, under date of October 15, 1929, page 3:

"Charter of District 12 Revoked and Provisional District Organization Takes Charge of Affairs.

* * * * *

"Mr. Harry Fishwick, President, and
All Members of the Executive Board,
District 12, United Mine Workers of America,
Springfield, Illinois.

"Gentlemen:

page 1401 } "The Executive Board of District 12 is insubordinate to the laws of the United Mine Work-

ers of America and the rulings of the International Executive Board."

Page 4:

"The undersigned, acting by grant of authority vested in this office by the Constitution of the United Mine Workers of America, hereby revokes the charter of District 12, United Mine Workers of America, effective upon the date above given.

"This action vacates all of the elective offices of District 12, all of the appointive offices of said District, and all agents and appointees of said District, secret or otherwise.

"This order revoking the charter of District 12 does not, in any manner, affect the charter or the status of the officers of the various Sub-District organizations now functioning within District 12, nor in any way affect the charters of the Local Unions of Mine Workers in District 12. Said Sub-Districts and Local Unions will continue to function in their usual manner and retain, as usual, in their own possession, all monies, real estate and other valuable property heretofore accumulated and in their possession.

"Concurrently with the revocation of the District charter, the International Union is setting up a Provisional District organization and appointing officers of said Provisional District to take over the business of District 12, assume the obligations of the joint wage agreement and its protection, and carry on, in every particular, the beneficent activities of a District Union."

That is signed "John L. Lewis."

Mr. Mullen: We object, Your Honor, for the same reasons heretofore stated, which need not be repeated here.

The Court: The objection is overruled.

Mr. Mullen: Exception noted.

(The document referred to was marked Plaintiff's Exhibit No. 70 and received in evidence.)

Mr. Allen: We now offer in evidence the portions which I shall presently read from page 4 of the United Mine Workers Journal, Volume XII, No. 7, dated April 1, 1930: Heading, "President Lewis Revokes Charter of District No. 14."

"Acting under instructions from the international convention, International President John L. Lewis revoked the charter of District No. 14, on March 26. He then set up a pro-

visional district government to function in District No. 14 and administer the affairs of the union until the charter is restored.

"President Lewis appointed Henry Allai, of Arma, as provisional district president, and Joseph E. Hromek, of Arma, as provisional secretary-treasurer. He announced that a provisional vice president and two provisional
page 1403 } board members at large would be appointed later."

"We also offer in evidence the amendments to the International Constitution adopted after the Fishwick case, found on page 18 of the same issue of the Journal, headed: "Amendments to the International Constitution Afford Better Method for Handling Union's Affairs."

"The international convention made numerous changes in the international constitution. All of these changes were for the purpose of affording a better and more effective method for conducting the affairs of the union and handling emergency situations that may arise in the future. The following are the sections affected as they now stand since being amended."

Mr. Mullen: Are you going to read all those?

Mr. Allen: No. We are offering the amendments in evidence. I don't see any necessity of reading them here now. There they are on that page.

Mr. Robertson: Some of them refer to the power of the president.

Mr. Allen: The headline, or rather, the heading states exactly what the purpose of the amendments is.

Mr. Mullen: If Your Honor please, we object to this because of the fact that it is back in 1929, not shown to be part of the present constitution, and for such of the other reasons heretofore stated as are applicable to this par-
page 1404 } ticular case.

Mr. Robertson: We are going to show that those provisions of the constitution relating to the powers of John L. Lewis set out in those amendments have been in effect ever since and are now in effect.

Colonel Harris: We want all the additional grounds that we have been interposing this morning.

The Court: Very well.

The objection is overruled.

Mr. Mullen: Exception.

(The document referred to was marked Plaintiff's Exhibit No. 71 and received in evidence.)

Mr. Allen: We now offer in evidence from page 1405 } Volume 44, No. 1, of the United Mine Workers Journal dated January 1, 1933, page 8: "Why Charter of Local Union 303, Orient Mine, Was Revoked by the International Union."

"The charter of Local Union No. 303, Orient mine, West Frankfort, Ill., has been revoked by President Lewis and a provisional government set up in the local."

Mr. Mullen: Is that all of that?

Mr. Allen: That is all of it.

Mr. Mullen: The same objection, Your Honor.

The Court: The same ruling and exception noted for defendants.

(The document referred to was marked Plaintiff's Exhibit 72 and received in evidence.)

Mr. Allen: We now offer in evidence from United Mine Workers Journal Volume 44, No. 6, March 15, 1933, page 13, the following headline: "International Board Names New Officers to Carry on the Business of District No. 12."

"District No. 12, United Mine Workers of America, is now functioning under the direction of the international union.

"Following the action of the district executive board, which petitioned the international to take over the affairs of the district, President Lewis and the international executive board designated representatives to assume page 1406 } charge of the district and direct the workings of the organization, the old officials being automatically replaced by the appointees of the international union under the laws of the organization.

"William J. Snead, Herrin, a former state senator, and long active in the affairs of the union, was designated as provisional president, succeeding John H. Walker."

Mr. Mullen: The same objection.

The Court: The same ruling.

Mr. Mullen: Exception noted.

(Document referred to was marked Plaintiff's Exhibit 73 and received in evidence.)

Mr. Allen: If Your Honor please, we now offer from United Mine Workers Journal Volume 45, No. 1, dated Janu-

ary 1, 1934, page 3, not to be read before the jury but to be used as in effect in the record in matters of law. It deals with the Fishwick case and amendment of the constitution after that and so forth, to give greater power. There is too much mention in it here with reference to the Fishwick case to be properly read before the jury but we want it in the record for any arguments of law that we have to make before Your Honor if the Court of Appeals gets the case.

Mr. Robertson: As I understand, it is offered and if it is objected to it may be excluded by the Court because it is not relevant to go to the jury. The only benefit we page 1407 } will get is to have it marked Plaintiff's Exhibit excluded.

The Court: Do you gentlemen object to it?

Colonel Harris: Yes, we repeat all our objections.

The Court: The Court sustains the objection.

You want it marked, don't you, Mr. Allen?

Mr. Allen: Yes, we want it marked.

(The document referred to was marked for identification only Plaintiff's Exhibit No. 73-A and EXCLUDED.)

Mr. Allen: We now offer in evidence page 13 from Volume 45 of the United Mine Workers Journal dated January 1, 1934, headline: "Virginia Now a Provisional District of the United Mine Workers for the First Time."

"Great things have been happening in the coal industry in recent months, and one of these is found in the creation of a provisional district of the United Mine Workers of America in the state of Virginia. For the first time in the history of the coal industry the miners of Virginia are organized under the banner of the United Mine Workers of America. This achievement and the creation for the first time of a district in Virginia have come about as a result of the great organization campaign conducted by the union since the enactment of the National Industrial Recovery Law, which guarantees to employees the right to organize and belong to a union.

"Following the recent meeting of the international executive board, the following official circular was sent to all local unions and members in Virginia:"

We don't care to read that circular. It is signed by John L. Lewis and Thomas A. Kennedy.

Mr. Mullen: Your Honor, in addition to the objections heretofore made, no one disputes that under the constitution

he can create provisional districts. This is merely a news item that a district has been created in Virginia. There isn't any question of dispute in here. This has no relevancy as evidence in this case whatever. It is just announcing that we have organized a new provisional district in Virginia. It is solely a news item. It doesn't show any policy. It doesn't show any revoking of charters. It is simply something done under the constitution. I can't see that a mere news item like that is in any way relevant to the matter merely because it happens to have occurred in Virginia.

Mr. Allen: Let me read the letter that was sent that goes along with it. I think that would probably round it out better:

"To All Local Unions, United Mine Workers of America, Located in the State of Virginia.-

"Greeting:

"The international executive board has created Provisional District 28, effective December 20, 1933. This
page 1409 } district will embrace all local unions of the United Mine Workers of America located in the state of Virginia.

"Mr. Dale Stapleton has been designated as President and Mr. William Minton as secretary-treasurer of Provisional District 28. The officers thus designated will establish a district office, assume charge of matters of internal concern and the obligations of the joint wage agreement on the date above set forth. Local unions in Provisional District 28 and the members thereof will cooperate with these officers in carrying out these duties.

"Effective December 20, 1933, and thereafter, all tax due from your local union on members who work five or more days per month, irrespective of the month for which it is due, should be paid by your local unions as follows:

"Fifty cents per month per member to the international secretary-treasurer; thirty-five cents per month per member to the secretary-treasurer of Provisional District 28; fifteen cents per month per member to be retained in the local union treasury.

"Application for exoneration from the payment of tax should be made to both the international and district offices on all members who do not work five or more days per month.

"Tax paid by your local union between now and December

20 will be credited to your local union under the district with which you are now affiliated.

page 1410 } "Yours truly, John L. Lewis, President,
Thomas Kennedy, Secretary-Treasurer."

That is the first time, Your Honor, that the record shows that a provisional district was created in the first instance.

Mr. Robertson: It show the beginning of a flow of funds up to the throne.

Mr. Allen: It show that all of the chief officers were appointed by the International Union, Mr. Lewis, President. The key to the whole situation between autonomous districts and so-called provisional districts is who appoints the chief officers. That is shown through all these references.

Mr. Mullen: There is no question, Your Honor, but what the International Executive Board has the right to create provisional districts. That is shown in the charter which has been introduced. Where is there any bearing on this case in the fact that acting under that a provisional district has been created in the state of Virginia? I can't see that it has any probative value. The only reason it is brought in is because the word Virginia is in there.

Mr. Robertson: Judge, I think it has very material value, for this reason: They are trying to show that District 50 and the United Construction Workers have their own individual local self-government. We brought out page 1411 } here in answers to interrogatories yesterday that the United Mine Workers made operational advances in the form of loans which were all prepaid. This is the first time we have anything here to show the interrelationship and the binding up between these people where the money begins to go home to the parent organization. I was struck, speaking from memory. I think these poor local boys take 15 cents and what did they send up to the International Union? Whoever controls the purse strings runs the show.

Colonel Harris: If the Court please, in addition to all the objections which we asked to be interposed, it isn't a question in this case of how the money is divided. Counsel states to the Court the poor local boys. In my judgment that statement to the Court reveals that it is offered for the purpose of prejudice and any such statement to the jury we respectfully submit would be subject to objection as being injected into the case for the purpose of arousing prejudice. How can we possibly be trying the division of money between a local and a district and the international.

Mr. Robertson: Just to show the hook-up and who was in control, that is all, and how they exercised it. They exer-

eised it by taking the money and saying you have to send us 35 cents out of each dues. You send 35 cents to one of the higher units and then the big bunch goes to the page 1412 } top.

Mr. Mullen: I notice that in the question you read in the interrogatories you carefully omitted the question and answer which showed that UCW did not pay anything to the international union.

Mr. Robertson: I thought you could read that.

Mr. Mullen: I am not reading anything out of the interrogatories.

Mr. Robertson: I also understand that they are bankrupt, but they are not paying their way yet. They are getting help from the parent. In the form of operational loans which hereafter must be repaid in full.

Mr. Mullen: That is District 50, not UCW.

The Court: You contend that the payment of this money, the division of this money, has something to do with agency?

Mr. Robertson: Yes.

Mr. Moore: The same idea as family relationship, Judge. It is all laid out, I think, in Volume 15 of American Jurisprudence, which says family relationship, financial relations of the parties, all of that has a tendency to prove agency.

The Court: I will overrule the objection.

(The document referred to was marked Plaintiff's Exhibit 74 and received in evidence.)

page 1413 } Mr. Allen: We now offer in evidence the following paragraph from Volume 47, September 1, 1936, United Mine Workers Journal, the article on page 6 headed "Gas and Coke Workers Union Chartered by UMW of A." We read this paragraph:

"Gas and By-Product Coke Workers of America has been chartered by the United Mine Workers of America in a history-making convention held at Boston, Mass., August 16.

"The district is a provisional one and will be known as District No. 50 of the United Mine Workers of America."

Mr. Moore: I will show it to Mr. Mullen. He hasn't seen this one.

Colonel Harris: I don't think that is important enough to object to.

Mr. Mullen: We are not even going to give an objection to it. We don't think it is important.

(The document referred to was marked Plaintiff's Exhibit 75 and received in evidence.)

Mr. Allen: We now offer in evidence from United Mine Workers Journal, Volume 52, No. 16, article headed, "Plans for the Expansion of District 50 under way," reading as follows:

"The International Executive Board of the United Mine Workers of America has laid out a program for the further expansion and organization work of District 50, page 1414 } and changes effecting the district personnel have been made, in official effect on August 1.

"In a communication addressed to the officers and members of all local unions of District 50, and signed by President Lewis, Vice President Murray and Secretary-Treasurer Kennedy the status of the proposed program is outlined as follows:

"By authority of the International Executive Board of the United Mine Workers of America, and pursuant to its constitution, the administrative affairs of Provisional District 50 have been placed in charge of an organizing committee representing the International Union. This committee is composed of Mr. O. E. Gasaway, Mr. John Kimetz, Mr. John J. Mates, Mr. Martin Wagner and Miss Kathryn Lewis.

"Mr. O. E. Gasaway will act as president of District 50 and Miss Kathryn Lewis will act as secretary-treasurer. Mr. Martin Wagner will represent District 50 on the International Executive Board. For a temporary period, Mr. John J. Mates will be acting secretary-treasury of District 50, pending the return of Miss Kathryn Lewis, who is on leave of absence.

"This arrangement will be effective as of August 1, 1941. Additional facilities will be furnished District 50 by the International Union to expand its organizing work and increase its services to our membership. Local unions or page 1415 } individual members having business to transact with District 50 will communicate with President Gasaway or Acting Secretary Mates, or other executive officers as the case may be.

"The officers of the International Union, United Mine Workers of America, are gratified at the progress hitherto made by District 50, but are confident that under the new arrangement still greater progress can be made. Each of the new executive officers of District 50 are fully qualified, have had substantial experience and should inspire the full confidence and support of every member of our organization.

"The international officers will cooperate with District 50 in the carrying out of its work and policies, and we look forward to an increased membership, with more substantial gains."

"District 50 is largely made up of chemical, coke, paper pulp and kindred workers, many of whom convert coal into chemical constituents used in the commercial world, such as dyes, drugs, plastics and numerous other products in which raw coal is the basic product.

"At the present time the district has approximately 25,000 paid up members, representing 280 local unions from California to Massachusetts and from Michigan to Florida. These represent 354 shops and 278 contracts in force.

"The International Union recognizes the fact that the chemical industry is growing at a startling pace page 1416 } and represents an increasing number of workers, many of whom are not organized. It is estimated there are 500,000 workers included in the chemical, coke, paper pulp workers and kindred fields, 300,000 of whom represent some phase of the chemical industry."

We likewise offer the article on page 8 of the same Journal headed "District 50 Drive."

"Godspeed to the new organization drive of District 50. With the blessings, influence and resources of the International Union behind them the organizing committee have launched the drive with the enthusiasm and determination which cannot help but bring success. The committee consists of Ora Gasaway, president of District 50; Miss Kathryn Lewis, secretary-treasurer of the district; Martin Wagner, former district president and now a member of the International Executive Board; John J. Mates, acting secretary-treasurer and International Representative John Kmetz.

"These names stand for success in the organized labor movement. They are seasoned leaders and able executives and under their leadership the drive even now is gaining momentum in various parts of the country.

"There are several hundred thousand workers in that part of the chemical industry which uses coal in the processing of its products. The United Mine Workers of America which has brought the benefits of unionism to the count- page 1417 } less thousands in steel, oil, rubber, automobile and other great industries of the nation feels duty bound to help the workers in the chemical industry, especially since coal gives them a tie to the mine workers. There

is ample evidence that those kindred workers are only waiting to be contacted properly to join the greatest labor organization in the world, the United Mine Workers of America.

"The benefits to be derived from this great drive will be permanent, for indications are that coal will be used in increasing quantities during the coming years as a basic element in the making of chemical products. The chemical industry will grow larger and employ more people who will need the protection of a strong union like the United Mine Workers of America."

And we read from page 9 the official circular to the officers and members of local unions of Provisional District No. 50, United Mine Workers of America, dated August 4, 1941.

"Greetings:

"By authority of the International Executive Board of the United Mine Workers of America, and pursuant to its constitution, the administrative affairs of Provisional District 50 have been placed in charge of an organizing committee representing the international union. This committee is composed of Mr. O. E. Gasaway, Mr. John Kmetz, Mr. John J. Mates, Mr. Martin Wagner and Miss Kathryn Lewis.

"Mr. O. E. Gasaway will act as president of page 1418 } District and Miss Kathryn Lewis will act as secretary-treasurer. Mr. Martin Wagner will represent District No. 50 on the International Executive Board. For a temporary period, Mr. John J. Mates will be the acting secretary-treasurer of District 50, pending the return of Miss Kathryn Lewis, who is on leave of absence.

"This arrangement will be effective as of August 1, 1941. Additional facilities will be furnished District 50, by the International Union to expand its organizing work and increase its services to our membership. Local unions or individual members having business to transact with District No. 50 will communicate with President Gasaway or Acting Secretary Mates or other executive officers as the case may be.

"The officers of the International Union, United Mine Workers of America, are gratified at the progress hitherto made by District No. 50, but are confident that under this new arrangement still greater progress can be made. Each of the new executive officers of District No. 50 are fully qualified, have had substantial experience and should inspire the full confidence and support of every member of our organization.

"The International Officers will cooperate with District No.

50 in the carrying out of its work and policies, and we look forward to an increasing membership, with more
page 1419 } substantial gains.

"John L. Lewis, President; Philip Murray, Vice-President; Thomas Kennedy, Secretary-Treasurer."

Mr. Mullen: May I see that? I didn't have a copy of that.

Mr. Robertson: If Your Honor please, I think it significant that in the answers to interrogatories yesterday it was brought out that the word "organization" means the international organization, and throughout that article there is reference to the organization. It is shot through with references to District 50 and the United Mine Workers of America being part of the organization, the one.

Mr. Mullen: We object to that, Your Honor, for the reasons previously stated.

The Court: The objection is overruled.

Mr. Mullen: Exception noted.

(The document referred to was marked Plaintiff's Exhibit 76 and received in evidence.)

Mr. Allen: We now offer in evidence from Volume 49, United Mine Workers Journal, dated February 15, 1948, the following from page 10, heading "Some Resolutions by District 50."

"The convention of District 50, Gas, By-Product Coke and Chemical Workers, United Mine Workers of America, which was in session January 24 to 26, in Washington, page 1420 } adopted a number of resolutions of importance to the workers.

"The convention took action looking to the establishment of a provisional district executive board to assist the district officers and organizers in the conduct of affairs of the district, which now has local unions in twenty-one states. The resolution was adopted and sets out that the members of the executive board shall serve without pay. The district officials proposed to consult with the international officers of the union as to the setting up of the board, which shall be chosen by the district officers. The purpose of the board, the resolution set out, was to cooperate and collaborate with district officers in furthering the growth of the district."

Mr. Mullen: We make the same objection.

The Court: The same ruling.

(The document referred to was marked Plaintiff's Exhibit 77 and received in evidence.)

Mr. Allen: We now offer the following in evidence, a paper designated United Mine Workers of America exhibit answering interrogatory 85. "United Mine Workers of America, Office of the International President."

"To Whom it May Concern:

"This is to certify that Kathryn Lewis is hereby duly authorized and legally commissioned to act as International Representative and Secretary Treasurer of Provisional District 50 of the United Mine Workers of America. This Commission is issued by virtue of the authority vested in the International President by the Constitution of the United Mine Workers of America and entitles the bearer to do and perform all lawful acts pertaining to his office and to exercise all the authority conferred by the laws of the organization.

"This Commission to remain in full force until April 1, 1951, unless sooner revoked by the President.

"Given under my hand and seal of the United Mine Workers of America this first day of April, 1950, John L. Lewis, President."

Colonel Harris: May we have the continuing objection we made yesterday to their reading or selecting any portion of an interrogatory.

The Court: The same objection continues.

Colonel Harris: We reserve an exception.

The Court: Exception is noted.

(The document referred to was marked Plaintiff's Exhibit 78 and received in evidence.)

The Court: Is that all, gentlemen?

Mr. Allen: We offer what is marked here. I won't read it, but will pass it over to His Honor. If you object and His Honor overrules us, we will just take our exception.

The Court: I don't know what is in it.
page 1422 } Mr. Mullen: It is the answer in a suit out in Illinois.

The Court: Does the same principle apply here as it did a few moments ago when I sustained the objection?

Colonel Harris: We interpose all the objections we have interposed all morning.

The Court: The objection is sustained.

Mr. Allen: You understand we are offering only the parts that are marked.

The Court: That is relative to some law, is it?

Mr. Mullen: It is an answer in a lawsuit in Illinois.

(The document referred to was marked for identification Plaintiff's Exhibit No. 79 and EXCLUDED.)

Mr. Allen: This involves the same principle. They will object to it, and Your Honor can rule.

Mr. Mullen: We object, Your Honor. This is in regard to that suit. It has nothing to do with this.

The Court: I sustain the objection.

(The document referred to was marked for identification Plaintiff's Exhibit No. 80 and EXCLUDED.)

The Court: I guess we had better recess for page 1423 } lunch and be back at 2:15 and we will start with the jury at 2:15.

(Whereupon, at 1:10 o'clock p. m. the Court recessed until 2:15 o'clock p. m. the same day.)

page 1424 } AFTERNOON SESSION.

2:15 p. m.

(The following proceedings were had in open court:)

Mr. Robertson: If Your Honor please, they thought they would pass these exhibits to me and I would read them. I seem to have better staying qualities.

Mr. Allen: Mr. Robertson, I hand you United Mine Workers Journal, Volume XXXII, No. 20, dated October 15, 1921, and ask you to read from page 7 under the heading, "Charter of District 14 Is Suspended by President Lewis."

Mr. Mullen: If Your Honor please, this is objected to for the reasons already recorded this morning.

The Court: Very well. The Court ruled this morning on that. The same ruling is made.

Colonel Harris: Exception noted.

Mr. Robertson: "Charter of District 14 Is Suspended by President Lewis.

"Because of the complications that arose as a result of the

refusal of Alexander Howat and others in District 14 to obey the laws of the union and their defiance of the international convention and all constituted authority in the union, President John L. Lewis has suspended the charter of District 14 and deposed Howat from office as president, as well as all other officials of the Kansas district. Announcement of this action was made in the newspapers of October 13. President

Lewis appointed George L. Peck, International
 page 1425 } Board member from District 14, as president of
 a provisional district in Kansas, and Thomas
 Harvey was appointed secretary-treasurer. They took possession of the offices and affairs of the Kansas miners at once. Peck, acting under direction of President Lewis, announced that all mine workers in that state would be expected to return to work at once. The work of reorganizing the district will proceed in regular order."

May I state to the Jury, Your Honor, the purpose of reading these exhibits?

Colonel Harris: No, we object to that, if the Court pleases. This is not the time to argue his case.

Mr. Robertson: I think they can get it without any assistance from me, then.

Mr. Allen: Now, Mr. Robertson, I hand you United Mine Workers Journal, Volume XXXIII, No. 21, dated November 1, 1922, and ask you to read the parts indicated on page 11 and page 13.

Mr. Robertson: It is entitled, "Executive Board Restores Autonomy of District 14 and Orders an Election."

Mr. Mullen: The same objection.

The Court: The same ruling.

Colonel Harris: Exception.

Mr. Robertson: "The international executive board, at its meeting at headquarters voted to restore the autonomy of

District 14 and ordered a district convention
 page 1426 } held. The convention call was sent out by the
 provisional officers of the district to meet on
 October 25 at Pittsburg, Kan."

.

"Just who will be candidates for district officers remains to be seen. Neither George L. Peck, provisional president nor Thomas Harvey, provisional secretary will be candidates, they have announced. President Peck will continue to act as provisional president until January 1, when the new officers to be elected on December 12, take their seats."

Mr. Moore: That is the paragraph which you ruled this morning should be excluded.

The Court: Yes.

Just disregard what was said about the election of officers. The Court ruled that out.

Mr. Robertson: On page 13:

"Autonomy of District No. 19 Suspended by Executive Board."

"The international executive board in session at Indianapolis on October 20, adopted a report of the committee on organization, suspending the autonomy of District 19.

"President Lewis was directed to suspend the autonomy in conformity with the board's action and sent the following communication to the officers and members of the district:

page 1427 }

"Indianapolis, Indiana,
October 23, 1922.

"To The Officers and Members of
District 19, United Mine Workers of America.

"Greeting:

"You are hereby officially advised that the International Executive Board in session in Indianapolis, Indiana, on October 20th, adopted the report of the Committee on Organization with respect to District 19, reading as follows:

" 'The affairs of District 19 are in a chaotic condition due to serious internal differences and also to the evils resulting from the economic depression. It is more than apparent from the evidence adduced and in possession of your Committee that a more definite policy should be followed in that district and that its administrative affairs should be placed on a more stable basis. Your committee, therefore, recommends that effective November 1, 1922, the autonomy of District 19 be suspended and the district placed under the authority of provisional officers responsible to the International Union. The International President is directed to apply this policy.'

"In consideration of the foregoing action, the autonomy of District 19 is suspended and all offices within the district declared vacant effective November 1, 1922. The International Union, exercising its constitutional au-
page 1428 } thority, will create a provisional district to take
complete charge of the affairs, property and

funds of District 19, effective from the date of the suspension of autonomy. * * *

Then:

"Yours Fraternally,

JOHN L. LEWIS,

President."

Mr. Allen: Now, Mr. Robertson, I hand you Volume XXXIV of United Mine Workers Journal, No. 15, dated August 1, 1923, and refer you to pages 3 and 4, and ask you to read the parts indicated on those pages.

Mr. Mullen: If Your Honor please, the same objection for the reasons previously stated and recorded.

The Court: The same ruling.

Colonel Harris: Note an exception.

Mr. Robertson: The article is entitled, "President Lewis Revokes Charter of District 26 and Orders Striking Miners Back to Work."

"President John L. Lewis, in a telegram to Daniel Livingstone, president of District 26, Nova Scotia, revoked the charter of the district and denounced Livingstone for his defiance and violation of the constitution and authority of the international union.

* * * * *

"Under the order issued by Mr. Lewis the autonomy of the district was suspended and the authority taken page 1429 } over by a provisional government.

* * * * *

"President Livingstone defies order of international union, whereupon he is summarily removed from office with other district officials. Reports show big percentage of men returned to work after autonomy of district was suspended."

This is signed by Lewis:

"By virtue of the authority vested in me by the constitution of the United Mine Workers of America, of which I am President, and in consideration of the further authority

granted in the premises by the International Executive Board, I, herewith, advise that the charter of District 26, United Mine Workers of America, stands revoked, effective this date. Under this action District 26 ceases to be an entity and you are automatically deprived of your office as President thereof. Alexander McIntyre, Vice-President, and J. B. McLachlan, as Secretary-Treasurer, likewise have their offices vacated through this same precise action. All members of the Executive Board of District 26, including any and all other officers of said District are in like manner automatically removed from office and can no longer undertake to represent in any capacity the United Mine Workers of America. This applies with equal force to Alexander Stewart, Member of the International Executive Board. Under separate order I am today creating a Provisional District to function within the jurisdiction of former District 26, under the direct authority and control of the International Union. International Representative Silby Barrett, of Glace Bay, Nova Scotia, has been designated as Provisional President thereof with sweeping authority to function in every proper capacity."

Signed, "John L. Lewis, President, United Mine Workers of America."

Mr. Allen: I now hand you United Mine Workers Journal, Volume XXXV, No. 24, dated December 15, 1924, and call your attention to the part indicated on page 4.

Mr. Mullen: That is objected to for the reasons heretofore stated and recorded.

The Court: Same ruling.

Mr. Mullen: And an exception.

Mr. Robertson: "Charters of 10 Insubordinate Local Unions Revoked by President Lewis in District 1."

"Charters of ten local unions of the United Mine Workers of America in the Pittston district, District 1, were revoked by President Lewis, following the refusal of the men to return to work pending the settlement of grievances held against the Pennsylvania and Hillsdale Coal & Iron Company."

Mr. Allen: I now hand you United Mine Workers Journal, Volume XL, No. 12, dated June 15, 1929, and direct your attention to page 8.

page 1431 } Mr. Mullen: We make the same objection;

The Court: The same ruling.

Mr. Mullen: Exception.

Mr. Robertson: The article is entitled, "President Lewis Revokes Charter of Sub-District No. 9 of District No. 12 for Insubordination of Officials."

"Indianapolis, Ind., June 8, 1929.

"Mr. D. B. Cobb, president; Mr. Heza Hindman, vice president; Mr. Ed. Loden, secretary-treasurer; Mr. Ed Rich, Mr. Glenn Malone, Mr. Luther Elliott, Mr. W. F. James, Mr. Luke Corley, members executive board; Sub-District 9, District 12, United Mine Workers of America, West Frankfort, Illinois.

"Dear Sirs and Brothers:

"The officers of Sub-District 9, District 12, United Mine Workers of America, are insubordinate to the laws of the United Mine Workers of America and the rulings of the international executive board. Pursuant, therefore, to the authority vested in me by the constitution of the United Mine Workers of America, I hereby revoke the charter of Sub-District 9, District 12, United Mine Workers of America, effective this date. This action dissolves the Sub-District, as such, and vacates all offices appertaining thereto, either elective, appointive, secret or otherwise.

"A provisional sub-district has been created page 1432 } and this office is designating Mr. John T. Jones, of West Frankfort, Illinois; Mr. John Belcher, of Zeigler, Illinois, and Mr. John Brown of West Frankfort, Illinois, as the provisional officers of Provisional Sub-District 9 District 12."

.

"John L. Lewis, President."

Mr. Allen: I now hand you United Mine Workers Journal, Volume XL, No. 20, dated October 15, 1929, and direct your attention to page 3.

Mr. Mullen: The same objection Your Honor, and for the same reasons.

The Court: The same ruling.

Mr. Mullen: An exception is noted.

Mr. Robertson: The article is entitled: "Charter of District 12 Revoked and Provisional District Organization Takes Charge of Affairs."

“Mr. Harry Fishwick, President, and
All Members of the Executive Board,
District 12, United Mine Workers of America,
Springfield, Illinois.

“Gentlemen:

“The Executive Board of District 12 is insubordinate to the laws of the United Mine Workers of America and the rulings of the International Executive Board.

• • • • •

“The undersigned, acting by grant of authority vested in this office by the Constitution of the United Mine Workers of America, hereby revokes the charter of District 12, United Mine Workers of America, effective upon the date above given.

“This action vacates all of the elective offices of District 12, all of the appointive offices of said District, and all agents and appointees of said District, secret or otherwise.

“This order revoking the charter of District 12 does not, in any manner, affect the charters or the status of the officers of the various Sub-District organizations now functioning within District 12, nor in any way affect the charters of the Local Unions of Mine Workers in District 12. Said Sub-Districts and Local Unions will continue to function in their usual manner and retain, as usual, in their own possession, all monies, real estate and other valuable property heretofore accumulated and in their possession.

“Concurrently with the revocation of the District charter, the International Union is setting up a Provisional District organization and appointing officers of said Provisional District to take over the business of District 12, assume the obligations of the joint wage agreement and its protection, and carry on, in every particular, the beneficent activities of a District Union.

• • • • •

“Yours truly,

JOHN L. LEWIS

President.”

page 1434 } Mr. Allen: I now hand you Volume XLI, No. 7, dated April 1, 1930, United Mine Workers Journal, and direct your attention to pages 4 and 18.

Mr. Mullen: The same objection, Your Honor, for the same reasons heretofore recorded.

The Court: Same ruling.

Mr. Mullen: And an exception is noted.

Mr. Robertson: The article is entitled: "President Lewis Revokes Charter of District No. 14."

"Acting under instructions from the international convention, International President John L. Lewis revoked the charter of District No. 14, on March 26. He then set up a provisional district government to function in District No. 14 and administer the affairs of the union until the charter is restored.

"President Lewis appointed Henry Allai, of Arma, as provisional district president, and Joseph E. Hromek, of Arma, as provisional secretary-treasurer. He announced that a provisional vice president and two provisional board members at large would be appointed later."

"Amendments to the International Constitution Afford Better Method for Handling Union's Affairs."

"The international convention made numerous changes in the international constitution. All of these changes were for the purpose of affording a better and more effective method for conducting the affairs of the union and handling emergency situations that may arise in the future. The following are the sections affected as they now stand since being amended."

Then the provisions of the constitution are listed.

Mr. Allen: I now hand you Volume 44, No. 1, dated January 1, 1933, United Mine Workers Journal, and direct your attention to page 8.

Mr. Mullen: The same objection, Your Honor, for the same reasons.

The Court: The same ruling.

Mr. Mullen: Exception.

Mr. Robertson: This is entitled, "Why Charter of Local Union 303, Orient Mine, Was Revoked by the International Union."

"The charter of Local Union No. 303, Orient mine, West Frankfort, Ill., has been revoked by President Lewis and a provisional government set up in the local."

Mr. Allen: I now hand you United Mine Workers Journal, Volume 44, No. 6, dated March 15, 1933, and direct your attention to page 13.

Mr. Mullen: The same objection, Your Honor.

The Court: The same ruling.

Mr. Mullen: Note an exception.

Mr. Robertson: The article is entitled, "International Board Names New Officers to Carry On the Business of District No. 12."

"District No. 12, United Mine Workers of America, is now functioning under the direction of the international union.

"Following the action of the district executive board, which petitioned the international to take over the affairs of the district, President Lewis and the international executive board designated representatives to assume charge of the district and direct the workings of the organization, the old officials being automatically replaced by the appointees of the international union under the laws of the organization.

"William J. Sneed, Herrin, a former state senator, and long active in the affairs of the union, was designated as provisional president, succeeding John H. Walker."

(Discussion off the record.)

page 1437 } Mr. Allen: I now hand you United Mine Workers Journal Volume 45, No. 1, dated January 1, 1934, and direct your attention to page 13—that already has been introduced and excluded.

Mr. Mullen: Which we objected to and I believe Your Honor sustained the objection.

The Court: Yes.

Mr. Robertson: "Virginia Now a Provisional District of the United Mine Workers for the First Time."

Mr. Mullen: Objection.

The Court: The same ruling.

Colonel Allen: Exception.

Mr. Robertson: "Great things have been happening in the coal industry in recent months, and one of these is found in the creation of a provisional district of the United Mine Workers of America in the State of Virginia. For the first time in the history of the coal industry the miners of Virginia are organized under the banner of the United Mine Workers of America. This achievement and the creation for the first time of a district in Virginia have come about as a result of the great organization campaign conducted by the union since the enactment of the National Industrial Recovery Law, which guarantees to employees the right to organize and belong to a union.

Supreme Court of Appeals of Virginia.

“Following the recent meeting of the inter-
page 1438 } national executive board, the following official
circular was sent to all local unions and mem-
bers in Virginia:

“December 16, 1933

“To All Local Unions, United Mine Workers of America,
Located in the State of Virginia.

“Greeting:

“The International executive Board has created Pro-
visional District 28, effective December 20, 1933. This dis-
trict will embrace all local unions of the United Mine Work-
ers of America located in the state of Virginia.

“Mr. Dale Stapleton has been designated as president and
Mr. William Minton as secretary-treasurer of Provisional
District 28. The officers thus designated will establish a dis-
trict office, assume charge of matters of internal concern and
in the obligations of the joint wage agreement on the date
above set forth. Local unions in Provisional District 28 and
the members thereof will cooperate with these officers in
carrying out these duties.

“Effective December 20, 1933, and thereafter, all tax due
from your local union on members who work five or more
days per month, irrespective of the month for which it is due,
should be paid by your local union as follows:

“Fifty cents per month per member to the international
secretary-treasurer; thirty-five cents per month per member
to the secretary-treasurer of Provisional Dis-
page 1439 } trict 28; fifteen cents per month per member to
be retained in the local union treasury.

“Application for exoneration from the payment of tax
should be made to both the international and district offices
on all members who do not work five or more days per
month.

“Tax paid by your local union between now and December
20 will be credited to your local union under the district with
which you are now affiliated.

“Yours truly, John L. Lewis, President, Thomas Kennedy,
Secretary-Treasurer.”

Mr. Allen: I now hand you United Mine Workers Journal
Volume 47, dated September 1, 1936, No. 17, and direct your
attention to page 6.

Mr. Mullen: The same objection, Your Honor, for the same
reason as previously stated.

The Court: Same ruling.

Mr. Mullen: Exception.

Mr. Robertson: "Gas and Coke Workers Union Chartered by U. M. W. of A."

Mr. Mullen: I withdraw it. We did not object to that this morning.

Mr. Robertson: I am not going to read it all, though.

The Court: Let the record show the objection is withdrawn.

Mr. Robertson: I am not going to read it all.

Mr. Mullen: I have nothing to say.

Mr. Robertson: "Gas and Coke Workers Union Chartered by U. M. W. of A. Gas and By-Product Coke Workers of America has been chartered by the United Mine Workers of America in a history-making convention held at Boston, Mass., August 16."

"The District is a provisional one and will be known as District No. 50 of the United Mine Workers of America."

Mr. Allen: Exhibit 76 is the next one.

Mr. Mullen: Your Honor, we object to the one he is now offering.

The Court: Was this offered this morning?

Mr. Robertson: Yes. This is the photostat. It has those pictures on it.

The Court: Would you like to compare them?

Mr. Mullen: No.

The Court: The same ruling.

Mr. Mullen: And exception.

Mr. Robertson: "Plans for the Expansion of District 50 under way."

"The International Executive Board of the United Mine Workers of America has laid out a program for the further expansion and organization work of District 50, page 1441 } and changes effecting the district personnel have been made, in official effect on August 1."

"In a communication addressed to the officers of all local unions of District 50, and signed by President Lewis, Vice President Murray and Secretary-Treasurer Kennedy the status of the proposed program is outlined as follows:

"By authority of the International Executive Board of the United Mine Workers of America, and pursuant to its constitution, the administrative affairs of Provisional District 50 have been placed in charge of an organizing committee

representing the International Union. This committee is composed of Mr. O. E. Gasaway, Mr. John Kmetz, Mr. John J. Mates, Mr. Martin Wagner and Miss Kathryn Lewis.

"Mr. O. E. Gasaway will act as president of District 50 and Miss Kathryn Lewis will act as Secretary-Treasurer. Mr. Martin Wagner will represent District 50 on the International Executive Board. For a temporary period, Mr. John H. Mates will be the acting secretary-treasurer of District 50, pending the return of Miss Kathryn Lewis, who is on leave of absence.

"This arrangement will be effective as of August 1, 1941. Additional facilities will be furnished District 50 by the International Union to expand its organizing work and increase its services to our membership. Local unions or individual members having business to transact with District 50 will communicate with President Gasaway or Acting Secretary Mates, or other executive officers as the case may be.

"The officers of the International Union, United Mine Workers of America, are gratified at the progress hitherto made by District 50, but are confident that under this new arrangement still greater progress can be made. Each of the new executive officers of District 50 are fully qualified, have had substantial experience and should inspire the full confidence and support of every member of our organization.

"The international officers will cooperate with District 50 in the carrying out of its work and policies, and we look forward to an increasing membership, with more substantial gains."

"District 50 is largely made up of chemical, coke, paper pulp and kindred workers, many of whom convert coal into chemical constituents used in the commercial world, such as dyes, drugs, plastics and numerous other products in which raw coal is the basic product.

"At the present time the district has approximately 25,000 paid up members, representing 280 local unions from California to Massachusetts and from Michigan to Florida. These represent 354 shops and 278 contracts in force.

"The International Union recognizes the fact that the chemical industry is growing at a startling pace and represents an increasing number of workers, many of whom are not organized. It is estimated there are 500,000 workers included in the chemical, coke, paper pulp workers and kindred fields, 300,000 of whom represent some phase of the chemical industry."

I read now from page 8, same number, which was ruled on by the Court this morning:

“District 50 Drive.

“Godspeed to the new organization drive of District 50. With the blessings, influence and resources of the International Union behind them the organizing committee have launched the drive with that enthusiasm and determination which cannot help but bring success. The committee consists of Ora Gasaway, president of District 50; Miss Kathryn Lewis, secretary-treasurer of the district; Martin Wagner, former district president and now a member of the International Executive Board; John J. Mates, acting secretary-treasurer and International Representative John Kmetz.

“These names stand for success in the organized labor movement. They are seasoned leaders and able executives and under their leadership the drive even now is gaining momentum in various parts of the country.

“There are several hundred thousand workers in that part of the chemical industry which uses coal in the processing of its products. The United Mine Workers of page 1444 } America which has brought the benefits of unionism to the countless thousands in steel, oil, rubber, automobile and other great industries of the nation feels duty bound to help the workers in the chemical industry, especially since coal gives them a tie to the mine workers. There is ample evidence that these kindred workers are only waiting to be contacted properly to join the greatest labor organization in the world, the United Mine Workers of America.

“The benefits to be derived from this great drive will be permanent, for indications are that coal will be used in increasing quantities during the coming years as a basic element in the making of chemical products. The chemical industry will grow larger and employ more people who will need the protection of a strong union like the United Mine Workers of America.”

Then on page 9:

“August 4, 1941.

“To the Officers and Members of all Local Unions of Provisional District No. 50, United Mine Workers of America:

“Greetings:

“By authority of the International Executive Board of the United Mine Workers of America, and pursuant to its con-

stitution, the administrative affairs of Provisional District No. 50 have been placed in charge of an organizing committee representing the international union. This committee is composed of Mr. O. E. Gasaway, Mr. John Kmetz, Mr. John J. Mates, Mr. Martin Wagner and Miss Kathryn Lewis.

"Mr. O. E. Gasaway will act as president of District No. 50 and Miss Kathryn Lewis will act as secretary-treasurer. Mr. Martin Wagner will represent District No. 50 on the International Executive Board. For a temporary period, Mr. John J. Mates will be the acting secretary-treasurer of District 50, pending the return of Miss Kathryn Lewis, who is on leave of absence.

"This arrangement will be effective as of August 1, 1941. Additional facilities will be furnished District No. 50 by the International Union to expand its organizing work and increase its services to our membership. Local Unions or individual members having business to transact with District No. 50 will communicate with President Gasaway or Acting Secretary Mates, or other executive officers as the case may be.

"The officers of the International Union, United Mine Workers of America, are gratified at the progress hitherto made by District No. 50, but are confident that under this new arrangement still greater progress can be made. Each of the new executive officers of District No. 50 are fully qualified, have had substantial experience and should inspire the full confidence and support of every member of our organization.

"The International Officers will cooperate with District No. 50 in the carrying out of its work and policies, and we look forward to an increasing membership, with more substantial gains.

"John L. Lewis, President; Philip Murray, Vice-President; Thomas Kennedy, Secretary-Treasurer."

Colonel Harris: Your Honor, I was under the impression that only those parts that he read were to go to the jury under the rulings while the jury was out.

The Court: That is true.

Mr. Robertson: That is true.

Colonel Harris: Didn't he turn over an entire journal to the jury?

The Court: That was a photostatic copy which was read this morning, and I inquired of counsel, and he said that is the same which the Court approved this morning.

Mr. Allen: It had only those pages.

The Court: Is this part of the same one you have just read?

Mr. Robertson: No, this is a new one.

Mr. Allen: This is another one.

Mr. Robertson: I am reading from—

The Court: Has it been offered?

Mr. Allen: Yes, that was passed on this morning.

The Court: It is satisfactory to the Court.
page 1447 } You have been offering them.

Mr. Allen: We now offer in evidence United Mine Workers Journal, Volume 59, Dated February 15, 1933, No. 49, and direct your attention to page 10.

Mr. Mullen: We object, Your Honor, for the reasons heretofore stated and recorded.

The Court: The same ruling.

Mr. Mullen: Exception.

Mr. Robertson: It is entitled "Some Resolutions by District 50."

"The convention of District 50, Gas, By-Product Coke and Chemical Workers, United Mine Workers of America, which was in session January 24 to 26, in Washington, adopted a number of resolutions of importance to the workers.

"The convention took action looking to the establishment of a provisional district executive board to assist the district officers and organizers in the conduct of affairs of the district, which now has local unions in twenty-one states. The resolution was adopted and sets out that the members of the executive board shall serve without pay. The district officials proposed to consult with the international officers of the union as to the setting up of the board, which shall be chosen by the district officers. The purpose of the board, the resolution set out, was to cooperate and collaborate with district officers in furthering the growth of the district."
page 1448 }

Mr. Allen: If Your Honor please, we have now read what Your Honor passed on before lunch, and I take it that while we have only a few others to offer, Your Honor would want to pass on them before we have any discussion of them here.

The Court: Gentlemen, you may recess for a few minutes.

(Brief recess.)

page 1449 } (The following proceedings were had in chambers.)

Mr. Robertson: United Mine Workers Journal, Volume 47, No. 4, February 15, 1936, page 3, as follows:

"Bird's Eye View of the Doings of The International Convention."

"More than 1,700 delegates representing all the Districts of the United Mine Workers of America in the United States and Canada attended the Thirty-fourth International Convention in Washington, which opened on Tuesday, January 28, and closed on Friday, February 7. The Convention is regarded as having been one of the most important in the history of the Union, because of the far reaching decisions made on subjects affecting not only the coal miners but the entire American Nation. Foremost among these decisions by the Convention were:

"1. Reaffirmation of the policy of industrial organization of the unorganized workers of the country.

"2. Endorsement of President Roosevelt and his Administration and pledge of support for his re-election.

"3. Refusal to restore autonomy to provisional Districts at the present time or until such time as the International Union shall deem it advisable to do so.

"4. Adoption of Scale Committee Report."

We offer that, Your Honor, as showing the control of the International Union over the districts and provisional districts. It is along the same line that we went over before lunch.

The Court: Do you want to add anything?

Mr. Mullen: We object, Your Honor, for all the reasons heretofore stated.

The Court: The objection is overruled.

Mr. Mullen: And an exception is noted.

(The document referred to was marked Plaintiff's Exhibit \$1 and received in evidence.)

Mr. Robertson: United Mine Workers Journal, Volume 52, No. 14, July 15, 1941, page 13, as follows from a speech of John L. Lewis:

"I am looking forward to the expansion of our organization in its numerical strength. Years and years ago in our conventions we were careful to maintain our claim of jurisdiction in those collateral industries that have to do with the by-product processes of the coal industry, and we have today

a recognized jurisdiction in the coke and the by-product and the chemical field that contains the potentialities of a great collateral organization of workers in this country, part of the United Mine Workers of America, under our District 50.

"I want this organization of ours to push and press to the point where we can expand our form of organization in these related industries, and continue to be the type of page 1451 } a union that will always be able to play the part we have been playing, the part of leadership. And in the days and months to come, after the work of the months of our negotiations are completed, I want every officer and every member of our organization to join with the rest of us in putting our shoulder to the wheel and organizing this by-product and chemical industry when we have the chance."

That is along the same line.

Mr. Mullen: May I see that, please?

We object.

The Court: The same objection; the same ruling.

Mr. Mullen: An exception, please.

(The document referred to was marked Plaintiff's Exhibit 82 and received in evidence.)

Mr. Robertson: United Construction Workers News, Volume 3, June 15, 1942, page 5, an article entitled "Agreement United District 50, UMWA, And United Construction Workers."

"Copy of agreement between District 50, United Mine Workers of America, and the Executive Officers of the United Construction Workers which was approved by the Executive Board of the International Union of the United Mine Workers of America on June 5, 1942.)"

"Pursuant to a resolution adopted by the National Policy Board of the United Construction Workers dated page 1452 } May 29, 1942, and pursuant to a resolution adopted on June 4, 1942, by the Organizing Committee of District 50, United Mine Workers of America, this agreement is this day made and entered into by and between the Executive Officers of the United Construction Workers and the Executive Officers of District 50, United Mine Workers of America, as follows to-wit:

"The resolution of the National Policy Board of the United Construction Workers (copy of which is hereto attached and

made a part hereof) having requested affiliation of the United Construction Workers with the United Mine Workers of America, the International President thereof having referred such request to the Executive Officers of District 50, UMWA, such affiliation is hereby granted and District 50, UMWA, accepts into its membership the United Construction Workers and all of its members, agreeing to fully and actively aid, support and promote the interests of the United Construction Workers, all of its locals and all of its members in their individual and collective efforts to organize the unorganized: **PROVIDED AND EXCEPT**, however, that District 50, UMWA, hereby assumes no present existing liabilities, debts or obligations of the United Construction Workers of any character whatsoever, and this agreement is not to be construed by either party hereto as any recognition or assumption, directly or indirectly, by District 50, UMWA, of any such liability, debt or obligation.

page 1453 } "The United Construction Workers accepts membership in said District 50, UMWA, upon the terms last hereinabove set out and agrees to abide by the laws, constitution and policies of the United Mine Workers of America in the performance of its duties.

"District 50, United Mine Workers of America agrees that proper certificate of affiliation will be issued the United Construction Workers as a division of said District 50, subject to the approval of the International Executive Board of the United Mine Workers of America.

"District 50 of the United Mine Workers of America further agrees that it will accept as officers and personnel of the division the present officers and personnel of the United Construction Workers, and that it will confirm in writing their appointment as officers and personnel of the division. Such appointment is, of course, subject to the constitution and policies of the United Mine Workers and the approval of the International Executive Board of the United Mine Workers of America, where necessary, and such employment is also subject to the powers vested in the Organizing Committee and Executive Officers of District 50.

"Such officers and personnel will include the Director of the Division, the Comptroller of the organization, the members of the National Policy Board, Regional Directors and Field Representatives or Staff Members, and
page 1454 }

clerical or office employees.
"District 50 further agrees that its Executive Officers will authorize the Director of the division to employ or remove such personnel as may be necessary in the exercise of his duties as Director, and in the accomplishment of the

administrative affairs of the division, subject only to the powers vested in the Organizing Committee and Executive Officers of District 50, or the Executive Officers of the International Union or the International Executive Board.

"The Director of the United Construction Workers division of District 50 shall report periodically to the Executive Officers and organizing staff of District 50 the financial and administrative affairs of the division.

"The United Construction Workers shall retain its name in functioning as a division of District 50, United Mine Workers of America.

"A. D. LEWIS,
United Construction Workers.

"GARDNER H. WALES,
United Construction Workers.

"O. E. GASAWAY, Pres.,
District 50, UMWA.

"KATHRYN LEWIS, Sec.-Treas.,
District 50, UMWA."

page 1455 } It is the same thing.
Mr. Mullen: The same objection.
The Court: The same ruling.

Colonel Harris: Note an exception.

(The document referred to was marked Plaintiff's Exhibit No. 83 and received in evidence.)

Mr. Robertson: United Mine Workers Journal, Volume 57, No. 20, October 15, 1946, page 19, article entitled, "District 50 Reports All-Time High In Membership And Local Unions."

"Observing its tenth anniversary, District 50, U. M. W. A., with 700 delegates in attendance, met in Atlantic City, N. J., for its fifth biennial convention and mapped out a constructive program of organizing the unorganized.

"Established in 1936 for the purpose of organizing under the banner of the United Mine Workers the employees in the coal by-products, chemical utility and similar industries, District 50 reported its growth from 13 to 1,186 local unions in the decade, making it now the largest single district of the United Mine Workers of America. These locals are situated in 644 cities, 44 states and the Dominion of Canada.

"With President John T. Kmetz, who is also an International Executive Board member from District 1, presiding,

the convention heard reports of progress in organizing, negotiating contracts, legal and research activities, and other major functions over the two-year period since page 1456 } its last session, and voted unanimous approval of the record.

"Commendation was voted of the services of the officers who, in addition to Kmetz, included Secretary-Treasurer Kathryn Lewis, Comptroller J. Raymond Bell, Director of Organization Michael F. Widman, Jr., and International Board Member Charles E. Fell, whose untimely death was mourned. The work of the international staff members in Washington as well as in the field was also praised.

"Comparing conditions that confront labor in this postwar period with those prevailing after World War I, Secretary-Treasurer Thomas Kennedy, U. M. W. A., said the outlook now is brighter because of the foresight of John L. Lewis in initiating the great drive which brought 15,000,000 workers into the house of organized labor, as against only four or five million a quarter century ago. He told of the great contribution of the coal miners to this tremendous task of organizing which still continues under the banner of District 50.

"In telling of the earlier organizing period, Kennedy described Lewis as a 'prophet crying out in the wilderness' and said he had so mobilized and energized American labor that it was going to continue to organize in the District 50 manner until the job was done. Suggestion that Lewis be named to replace Secretary of State Byrnes, brought cheers and applause from Kennedy's audience when he ob- page 1457 } served, in passing, that labor's outstanding champion be sent over to talk turkey to Molotov.

"Kennedy especially warned labor against inimical legislation which is scheduled to be presented in the next session of Congress and he commented that labor cannot depend on false friends, but must be alert itself at all times. When labor is only partially organized, Kennedy observed, all the liberals are for it, but when it is strong, then the liberals want laws to control it. 'They feel, then,' he added, 'that we ought to have a guardian, that we will not be able to manage our own affairs, and they are afraid of the influence of labor.' "

If Your Honor please, I think that paragraph ought to come out.

The Court: I think so, too. The last paragraph you read ought to come out.

Mr. Robertson: I am marking that out.

Now the next paragraph:

"Theme of the convention was 'Organize the Unorganized' and this was referred to by virtually all the speakers headed by Acting President John O'Leary of the United Mine Workers, and including International Board Members John Mates and John Ghizzoni, members also of the District 50 Organizing Committee; President William Mitch of District 20, who acted as chairman of the Officers' Report Committee; page 1458 } mittee; and many others."

I offer that for the same reason, Your Honor, with that paragraph deleted.

Mr. Mullen: May I see it just a minute

We object, Your Honor, for the reasons previously stated.

The Court: The same ruling.

Mr. Mullen: All of which are hereby repeated.

Exception is noted.

The Court: Mark that so it will be sure not to be read.

(The document referred to was marked Plaintiff's Exhibit No. 84 and received in evidence.)

Mr. Robertson: United Mine Workers of America, District 50 News, Volume 6, No. 8, January 15, 1947. I don't know what page it is. The article is entitled, "New Organizing Committee Named For District 50."

"The International Executive Board of the United Mine Workers of America, at its recent meeting in Washington, appointed a committee charged with the task of intensifying the organizational campaign of District 50.

"Members of the committee are: A. D. Lewis, chairman; John Ghizzoni, District 2, who will represent the international executive board; John P. Busarello, president of District 5; Martin F. Brennan, president of District 7; page 1459 } Hugh White, president of District 12, and George J. Titler, president of District 29."

That goes for the same purpose.

Mr. Mullen: The same objection.

The Court: The same ruling.

Colonel Harris: Note an exception.

(The document referred to was marked Plaintiff's Exhibit No. 85 and received in evidence.)

Mr. Robertson: United Mine Workers Journal, Volume 58, No. 21, November 1, 1947, page 6, article entitled, "UMWA

Defeats Attempt of Metal and Building Trades to Hamstring Dist. 50."

"In a high tribute to District 50 which, Kennedy pointed out, has often been referred to in a derogatory sense as being a 'catch-all' organization, he said: 'District 50 is no different from many other international unions that have gone forth to organize the unorganized in order to build up this labor movement; and District 50 is a responsible, legitimate district union of the United Mine Workers of America under its jurisdiction and under its control'.

* * * * *

"Lewis told the convention that District 50 is a going concern with hundreds of thousands of members who were organized from the ranks of the unorganized. It has given protection to workers that various AFL international unions have neglected, he informed the convention.

"'Don't push us around,' Lewis intoned. 'We can't be pushed. This procedure here, as pointed out in the minority report, is irregular. It has not been before the Council. If you want to handle it in the usual way, all right. We will always talk to you about it * * *'

I think that last paragraph ought to come out, about "Don't push us around."

Mr. Mullen: I think the whole thing ought to come out, because it is just the A. F. of L. convention proceedings.

Mr. Robertson: There is just one paragraph in there that is any good.

The Court: What is the paragraph you are offering

Mr. Robertson: I am offering this one paragraph:

"In a high tribute to District 50 which, Kennedy pointed out, has often been referred to in a derogatory sense as being a 'catch-all' organization, he said: 'District 50 is no different from many other international unions that have gone forth to organize the unorganized in order to build up this labor movement; and District 50 is a responsible, legitimate district union of the United Mine Workers of America under its jurisdiction and under its control.'"

The Court: Any objection

Mr. Mullen: Yes.

The Court: I will overrule the objection.

page 1461 } Mr. Mullen: Exception.

(The document referred to was marked Plaintiff's Exhibit No. 86 and received in evidence.)

page 1462 } Mr. Robertson: United Mine Workers Journal, Volume 59, No. 21, November 1, 1948, page 4, article entitled, "Convention Commends Dist. 50 Progress, All Districts Urged to Aid Organizing."

"Continued energetic support of the organizing efforts of District 50, UMW, was urged in a resolution unanimously adopted by the convention which commended the officers of that district for the degree of success achieved."

This is the one that I think is grand:

"Work of District 50, it was pointed out by Thomas Kennedy, international vice president, has been greatly increased and complicated by enactment of the NAM-Taft-Hartley Act and it is, therefore, more necessary than ever that all UMW districts lend full assistance to its organizing activities."

I will leave that paragraph out. Now:

" 'We believe,' Kennedy observed, 'that if you give this cooperation and support out in the field this great district will continue to make progress, not only as affects the membership of that particular district, but reacting into the parent organization and into the lives of the men who work in the mines. It means a great deal to us all and to all of you.' "

"Text of the resolution supporting District 50 follows:

page 1463 } " 'Whereas, For some years District 50 has been an integral part of our great organization, with an official staff that is efficient and energetic; they leave no stone unturned to bring under the banner of this branch of the UMW, thousands of unorganized men and women of our nation; and

" 'Whereas, Were it not for this branch of our union many who are now enjoying the benefits of working under a union contract would have never heard the story of collective bargaining and what it means to the men and women who toil; therefore, be it

" 'Resolved, That we commend the able officials of District 50 for their past untiring efforts, for their splendid victories, their unity of purpose to never rest on past victories, but to press forward ever diligently until the last man and woman who toils in our nation has learned of the many good things

of life that can come to them by associating themselves with a trade union; and, be it further

“Resolved, That our great parent body, through its responsible and efficient officers continue to lend every moral and financial support to District 50; that the coming generations may reap a harvest of increased wages, shorter hours and immeasurably more of the better things of life; that the officers of this fine district may be able to continue its ceaseless efforts to make the luxuries cherished by our people a reality.”

page 1464 } We say that makes them a general agent without any strings to it.

Mr. Mullen: If Your Honor please, we object for the reasons heretofore stated and because it is merely a pep speech.

Mr. Robertson: It is a resolution adopted by the International Convention and published in your official publication.

The Court: I will allow it for what it is worth.

Mr. Mullen: Exception.

(The document referred to was marked Plaintiff's Exhibit 87 and received in evidence.)

Mr. Robertson: United Mine Workers Journal, Volume 60, No. 1, January 1, 1949, page 6, an article entitled “President Lewis Commends District 50 and Reaffirms UMWA Goal of Organizing.”

“Support for District 50, UMWA, and the United Construction Workers was pledged anew by the international officers of the United Mine Workers of America at a meeting of district 50 and UMW regional directors on December 13 and 14 in Washington.

“President Lewis, in extending seasonal greetings to the regional directors, complimented them on the progress the two organizations had made during the last year. He counseled the directors not to be discouraged by obstacles, and recalled the long fight the mine workers had made to organize the coal industry.

“‘Serious obstacles and disadvantageous conditions,’ he said, ‘you will always have. The degree of success you are achieving can be measured by the degree of opposition you encounter. And, as you gain in strength, the measure of that opposition is bound to increase.

“‘So, carry on. You have a finely synchronized organiza-

tion. Its financial affairs are being administered in a highly efficient way, and every effort is being made to avoid unnecessary expenditures.

"I don't know of any greater contribution an individual can make than to be associated with an organization such as ours—an organization dedicated to principles such as ours. Because our purpose is to maintain for the future, our form of government, freedom of religion, personal liberty and the right to enjoy those Constitutional rights and privileges of which the founders of our Republic dreamed."

"Thomas Kennedy, vice president, and John Owens, secretary-treasurer, also recalled the early struggles of the miners to organize and praised the administrative abilities of A. D. Lewis, chairman of the Organizing Committee of District 50 and director of the United Construction Workers.

"Other speakers at the meeting included A. D. Lewis, Luke Brett, and Elwood Moffett, administrative assistants; Comptroller O. B. Allen, and Yelverton Cowherd, general counsel.

"Director Lewis told of plans for expanding regional offices east of the Mississippi, and for carrying on the work of 'organizing the unorganized.'"

I think we can leave out the last two paragraphs, don't you?

Mr. Allen: Yes.

Mr. Mullen: I object.

The Court: You object for the same reasons; the same ruling and an exception.

(The document referred to was marked Plaintiff's Exhibit 88 and was received in evidence.)

Mr. Robertson: United Mine Workers of America, District 50 News, Volume 1, No. 19, August 15, 1942, page 5, "A Letter From the President."

"On the sixth anniversary of its founding, District 50 today is one of the most militant and healthy organizations within the United Mine Workers of America and the legitimate Labor movement of this country."

* * * * *

"These accomplishments would never have been met, however, if it had not been for the splendid leadership of John L. Lewis, international president of the United Mine Workers

of America. It was President Lewis who provided the funds and men to make our success possible. It was his leadership that prevailed on thousands of members to join District 50. Mr. Lewis has given those thousands of workers the benefits that had been denied to them so long.

"Fraternally yours,

"O. E. GASAWAY."

I think that is just what he was doing.

Mr. Mullen: Same objection.

The Court: Same ruling.

Mr. Mullen: Exception.

(The document referred to was marked Plaintiff's Exhibit 89 and received in evidence.)

Mr. Robertson: United Mine Workers Journal, Volume 53, No. 12, June 15, 1942, page 15, article entitled, "Attacks upon District 50, United Mine Workers of America, by the Officers of the CIO and Its Affiliates."

I know that is no good.

Mr. Allen: It is a resolution. Don't read the heading. Just read that paragraph right there.

Mr. Robertson: "District 50 of the United Mine Workers of America is an integral part of this union, set up in 1936 to include coke, by-product coal and chemical workers, together with workers in the related industries. Upon its re-organization as of August 1, 1941, the District launched a broad organizing campaign under the instructions of its organizing committee. It has succeeded notably and is growing rapidly. Its affairs are conducted in accordance with the constitution and the policies of the United Mine Workers, and this committee desires to compliment its organizing committee upon the achievements of the district during the last few months."

Mr. Mullen: Let me see that, please.

Mr. Robertson: That is all, isn't it?

Mr. Allen: Yes.

Mr. Mullen: You read the first paragraph?

Mr. Robertson: That is right, only that.

Mr. Mullen: You omitted the heading about the CIO?

Mr. Robertson: Let's see.

Mr. Mullen: It is an attack by the CIO.

Mr. Allen: We don't want that read. Read that paragraph. It is a resolution.

Mr. Mullen: The same objection, Your Honor.

The Court: The same ruling, and an exception is noted.

(The document referred to was marked Plaintiff's Exhibit 90 and received in evidence.)

Mr. Allen: We will offer in evidence these various constitutions.

Mr. Robertson: Why don't you object to them page 1469 } and let them be excluded?

Mr. Mullen: I will object to them. I think the old constitutions have nothing to do with the present case. We are acting under the constitution in effect in 1944.

Mr. Moore: They show how the constitutions have been changed, Your Honor, how they have broadened the powers of the International Union.

The Court: I will admit them for what they are worth.

Mr. Robertson: I understand they are being introduced, but excluded; that they will be allowed in the record, but we don't want to read them to the jury.

The Court: One minute, then. You just introduce them for the record?

Mr. Robertson: That is all. I think the simplest way to do it is that we offer them, Mr. Mullen objects, the Court sustains the objection, and they are marked exhibit so-and-so excluded.

Mr. Allen: That is right.

Mr. Mullen: That is the way to handle them, I think.

The Court: I think probably that is right. Do you object, Mr. Mullen?

Mr. Mullen: Yes.

The Court: The Court sustains the objection.

Mr. Mullen: That means they can't read them page 1470 } to the jury, but may use them on appeal.

Mr. Allen: In order to use them on appeal and even before Your Honor for purposes of reference, I reckon we would have to let the record show an exception, wouldn't we?

The Court: I suspect you would.

Mr. Robertson: Let it show it, then. Nobody cares whether we except or not.

Mr. Moore: Plaintiff excepts to the Court's ruling on the constitutions.

(The documents referred to were marked for identification only Plaintiff's Exhibit 91 and EXCLUDED.)

Mr. Mullen: We object to the full proceedings of the 35th, 40th, 33rd, 36th, 37th, and 39th constitutional conventions. We object to them as irrelevant and because they contain a great deal of matter that it is very improper to go before the jury, financial statements, and so forth. We object to the introduction of these.

The Court: I sustain the objection.

Mr. Robertson: Exception.

(The documents referred to were marked for identification only Plaintiff's Exhibit 92 and EXCLUDED.)

(Brief recess.)

page 1471 } (The following proceedings were had in open Court:)

The Court: All right, Mr. Robertson.

Mr. Robertson: If Your Honor please, I refer to Plaintiff's Exhibit 81 which is a photostatic copy of United Mine Workers Journal, Volume 47, No. 4, February 15, 1936, page 3, which reads as follows—

Colonel Harris: We get in our objection. The same objection.

The Court: The same ruling.

Colonel Harris: Note an exception.

Mr. Robertson: "Bird's Eye View of the Doings of The International Convention.

"More than 1700 delegates representing all the Districts of the United Mine Workers of America in the United States and Canada attended the Thirty-fourth International Convention in Washington, which opened on Tuesday, January 28, and closed on Friday, February 7. The Convention is regarded as having been one of the most important in the history of the Union, because of the far reaching decisions made on subjects affecting not only the coal miners but the entire American Nation. Foremost among these decisions by the Convention were:

"1. Reaffirmation of the policy of industrial organization of the unorganized workers of the country.

"2. Endorsement of President Roosevelt and page 1472 } his administration and pledge of support for his re-election.

"3. Refusal to restore autonomy to provisional Districts at the present time or until such time as the International Union shall deem it advisable to do so."

I refer you to Plaintiff's Exhibit 82, which is a photostatic copy of United Mine Workers Journal, Volume 52, No. 14, July 15, 1941, page 13.

Mr. Mullen: We object, Your Honor.

The Court: Same ruling.

Mr. Mullen: For the reasons previously stated and note an exception.

Mr. Robertson: Part of an address by President John L. Lewis:

"I am looking forward to the expansion of our organization in its numerical strength. Years and years ago in our conventions we were careful to maintain our claim of jurisdiction in those collateral industries that have to do with the by-product processes of the coal industry, and we have today a recognized jurisdiction in the coke and the by-product and the chemical field that contains the potentialities of a great collateral organization of workers in this country, part of the United Mine Workers of America, under our District 50.

"I want this organization of ours to push and press to the point where we can expand our form of organization in these related industries, and continue to be the type of a union that will always be able to play the part we have been playing, the part of leadership. And in the days and months to come, after the work of the months of our negotiations are completed, I want every officer and every member of our organization to join with the rest of us in putting our shoulder to the wheel and organizing this by-product and chemical industry when we have the chance."

I refer to Plaintiff's Exhibit 83, which is a photostat of United Construction Workers News, Volume 3, June 15, 1942, page 5.

Mr. Mullen: Same objection, Your Honor.

The Court: Same ruling.

Mr. Mullen: An exception.

Mr. Robertson: This is entitled "Agreement Unites District 50, UMWA and United Construction Workers.

"Copy of agreement between District 50, United Mine Workers of America, and the Executive Officers of United Construction Workers which was approved by the Executive Board of the International Union of the United Mine Workers of America on June 5, 1942.

"Pursuant to a resolution adopted by the National Policy Board of the United Construction Workers dated May 29, 1942, and pursuant to a resolution adopted on June 4, 1942, by the Organizing Committee of District 50, United
page 1474 } Mine *Mine* Workers of America, this agreement
is this day made and entered into by and between
the Executive Officers of the United Construction Workers and
the Executive Officers of District 50, United Mine Workers of
America, as follows to-wit:

"The resolution of the National Policy Board of the United Construction Workers (copy of which is hereto attached and made a part hereof) having requested affiliation of the United Construction Workers with the United Mine Workers of America, the International President thereof having referred such request to the Executive Officers of District 50, UMWA, such affiliation is hereby granted and District 50, UMWA, accepts into its membership the United Construction Workers and all of its members, agreeing to fully and actively aid, support and promote the interests of the United Construction Workers, all of its locals and all of its members in the individual and collective efforts to organize the unorganized: PROVIDED AND EXCEPT, however, that District 50, UMWA, hereby assumes no present existing liabilities, debts or obligations of the United Construction Workers of any character whatsoever, and this agreement is not to be construed by either party hereto as any recognition or assumption, directly or indirectly, by District 50, UMWA, of any such liability, debt or obligation.

"The United Construction Workers accepts membership in said District 50, UMWA, upon the terms last hereinabove set out and agreed to abide by the laws, constitution
page 1475 } and policies of the United Mine Workers of
America in the performance of its duties.

"District 50, United Mine Workers of America agrees that proper certificate of affiliation will be issued the United Construction Workers as a division of said District 50, subject to the approval of the International Executive Board of the United Mine Workers of America.

"District 50 of the United Mine Workers of America further agrees that it will accept as officers and personnel of

the division the present officers and personnel of the United Construction Workers, and that it will confirm in writing their appointment as officers and personnel of the division. Such appointment is, of course, subject to the constitution and policies of the United Mine Workers and the approval of the International Executive Board of the United Mine Workers of America, where necessary, and such employment is also subject to the powers vested in the Organizing Committee and Executive Officers of District 50.

"Such officers and personnel will include the Director of the Division, the Comptroller of the organization, the members of the National Policy Board, Regional Directors, and Field Representatives or Staff Members, and clerical or office employees.

"District 50 further agrees that its Executive Officers will authorize the Director of the division to employ page 1476 } or remove such personnel as may be necessary in the exercise of his duties as Director, and in the accomplishment of the administrative affairs of the division, subject only to the powers vested in the Organizing Committee and Executive Officers of District 50, or the Executive Officers of the International Union or the International Executive Board.

"The Director of the United Construction Workers division of District 50 shall report periodically to the Executive Officers and organizing staff of District 50 the financial and administrative affairs of the division.

"The United Construction Workers shall retain its name in functioning as a division of District 50, United Mine Workers of America.

"A. D. Lewis, United Construction Workers.

"Gardner H. Wales, United Construction Workers.

"O. E. Gasaway, Pres., District 50, UMWA.

"Kathryn Lewis, Sec.-Treas., District 50, UMWA."

-I refer to Plaintiff's Exhibit 84, which is a photostat copy of United Mine Workers Journal, Volume 57, No. 20, October 15, 1946, page 19, article entitled "District 50 Reports"—

Mr. Mullen: If Your Honor please, I object for the reasons heretofore stated and recorded.

The Court: Same ruling.

Mr. Mullen: Exception.

page 1477 } Mr. Robertson: "District 50 Reports All-Time High in Membership and Local Unions.

"Observing its tenth anniversary, District 50, U. M. W. A., with 700 delegates in attendance, met in Atlantic City, N. J., for its fifth biennial convention and mapped out a constructive program of organizing the unorganized.

"Established in 1936 for the purpose of organizing under the banner of the United Mine Workers the employees in the coal by-product, chemical, utility and similar industries, District 50 reported its growth from 13 to 1,186 local unions in the decade, making it now the largest single district of the United Mine Workers of America. These locals are situated in 644 cities, 44 states and the Dominion of Canada.

"With President John T. Kmetz, who is also an International Executive Board member from District 1, presiding, the convention heard reports of progress in organizing, negotiating contracts, legal and research activities, and other major functions over the two-year period since its last session, and voted unanimous approval of the record.

"Commendation was voted of the services of the officers who, in addition to Kmetz, including Secretary-Treasurer Kathryn Lewis, Comptroller J. Raymond Bell, Director of Organization Michael F. Widman, Jr., and International Board Member Charles E. Fell, whose untimely
page 1478 } death was mourned. The work of the international staff members in Washington as well as in the field was also praised.

"Comparing conditions that confront labor in this postwar period with those prevailing after World War I, Secretary-Treasurer Thomas Kennedy, U. M. W. A. said the outlook now is brighter because of the foresight of John L. Lewis in initiating the great drive which brought 15,000,000 workers into the house of organized labor, as against only four or five million a quarter century ago. He told of the great contribution of the coal miners to the tremendous task of organizing which still continues under the banner of District 50.

"In telling of the earlier organizing period, Kennedy described Lewis as a 'prophet crying out in the wilderness' and said he had so mobilized and energized American labor that it was going to continue to organize in the District 50 manner until the job was done. Suggestions that Lewis be named to replace Secretary of State Byrnes, brought cheers and applause from Kennedy's audience when he observed, in passing, that labor's outstanding champion be sent over to talk turkey to Molotov.

"Theme of the convention was 'Organize the Unorganized' and this was referred to by virtually all the speakers headed by Acting President John O'Leary of the United Mine

Workers, and including International Board page 1479 } Members John Mates and John Ghizzonni, members also of the District 50 Organizing Committee; President William Mitch of District 20, who acted as chairman of the Officers' Report Committee; and many others."

I refer now to Plaintiff's Exhibit 85.

Mr. Mullen: I object, Your Honor, to the introduction of that for the reasons heretofore stated and recorded.

The Court: The same ruling.

Mr. Mullen: An exception is noted.

Mr. Robertson: Which is a photostatic copy of United Mine Workers of America District 50 News, Volume 6, No. 8, January 15, 1947, an article entitled "New Organizing Committee Named For District 50."

"The International Executive Board of the United Mine Workers of America, at its recent meeting in Washington, appointed a committee charged with the task of intensifying the organizational campaign of District 50.

"Members of the committee are: A. D. Lewis, chairman; John Ghizzoni, District 2, who will represent the international executive board; John P. Busarello, president of District 5; Martin F. Brennan, president of District 7; Hugh White, president of District 12, and George J. Titler, president of District 29."

I refer now to Plaintiff's Exhibit No. 86.

Mr. Mullen: We object, Your Honor, for the page 1480 } reasons heretofore stated.

The Court: Same ruling.

Mr. Mullen: An exception, please.

Mr. Robertson: Which is a photostat copy of United Mine Workers Journal, Volume 58, No. 21, November 1, 1947, page 6, paragraph as follows:

"In a high tribute to District 50 which, Kennedy pointed out, has often been referred to in a derogatory sense as being a 'catch-all' organization, he said: 'District 50 is no different from many other international unions that have gone forth to organize the unorganized in order to build up this labor movement; and District 50 is a responsible, legitimate district union of the United Mine Workers of America under its jurisdiction and under its control.'"

I refer now to Plaintiff's Exhibit No. 87.

Mr. Mullen: Objection, Your Honor, for the same reasons stated heretofore.

The Court: Same ruling.

Mr. Mullen: Exception, please.

Mr. Robertson: Which is a photostatic copy of United Mine Workers, Volume 59, No. 21, November 1, 1948, page 4, the article entitled "Convention Commends Dist. 50 Progress All Districts Urged To Aid Organizing.

"Continued energetic support of the organizing efforts of District 50, UMWA, was urged in a resolution page 1481 } unanimously adopted by the convention which commended the officers of that district for the degree of success achieved.

" 'We believe,' Kennedy observed, 'that if you give this cooperation and support out in the field this great district will continue to make progress, not only as affects the membership of that particular district, but reacting into the parent organization and into the lives of the men who work in the mines. It means a great deal to us all and to all of you.'

"Text of the resolution supporting District 50 follows:

" 'Whereas, For some years District 50 has been an integral part of our great organization, with an official staff that is efficient and energetic; they leave no stone unturned to bring under the banner of this branch of the UMWA, thousands of unorganized men and women of our nation; and

" 'Whereas, Were it not for this branch of our union many who are now enjoying the benefits of working under a union contract would have never heard the story of collective bargaining and what it means to the men and women who toil; therefore, be it

" 'Resolved, That we commend the able officials of District 50 for their past untiring efforts, for their splendid victories, their unity of purpose to never rest on past victories, but to press forward ever diligently until the last man page 1482 } and woman who toils in our nation has learned of the many good things of life that can come to them by associating themselves with a trade union; and, be it further

" 'Resolved, That our great parent body, through its responsible and efficient officers, continue to lend every moral and financial support to District 50, that the coming generations may reap a harvest of increased wages, shorter hours and immeasurably more of the better things of life; that the officers of this fine district may be able to continue its ceaseless

efforts to make the luxuries cherished by our people a reality.' "

Mr. Robertson: I refer now to Plaintiff's Exhibit 88.

Mr. Mullen: The same objection, Your Honor, for the reasons heretofore stated and recorded.

The Court: The same ruling.

Mr. Mullen: And an exception, please.

Mr. Robertson: Which is a photostat of United Mine Workers Journal, Volume 60, No. 1, January 1, 1949, page 6. Article entitled "President Lewis Commends District 50 And Reaffirms UMWA Goal of Organizing:

"Support for District 50, UMWA, and the United Construction Workers was pledged anew by the international officers of the United Mine Workers of America page 1483 } at a meeting of District 50 and UCW regional directors on December 13 and 14 in Washington.

"President Lewis, in extending seasonal greetings to the regional directors, complimented them on the progress the two organizations had made during the last year. He counseled the directors not to be discouraged by obstacles and recalled the long fight the mine workers had made to organize the coal industry.

" 'Serious obstacles and disadvantageous conditions,' he said, 'you will always have. The degree of success you are achieving can be measured by the degree of opposition you encounter. And, as you gain in strength, the measure of that opposition is bound to increase.

" 'So, carry on. You have a finely synchronized organization. Its financial affairs are being administered in a highly efficient way, and every effort is being made to avoid unnecessary expenditures.

" 'I don't know of any greater contribution an individual can make than to be associated with an organization such as ours—an organization dedicated to principles such as ours. Because our purpose is to maintain for the future, our form of government, freedom of religion, personal liberty and the right to enjoy those Constitutional rights and privileges of which the founders of our Republic dreamed.'

"Thomas Kennedy, vice-president, and John page 1484 } Owens, secretary-treasurer, also recalled the early struggles of the miners to organize and praised the administrative abilities of A. D. Lewis, chairman of the Organizing Committee of District 50 and director of the United Construction Workers."

I refer now to Plaintiff's Exhibit No. 89.

Mr. Mullen: Objection for the same reason, Your Honor.

The Court: The same ruling.

Mr. Mullen: Exception.

Mr. Robertson: Which is a photostatic copy of United Mine Workers of America, District News, Volume No. 1, No. 19, August 15, 1942—I *think* it is page 5. It is entitled "A Letter from the President."

"On the sixth anniversary of its founding District 50 today is one of the most militant and healthy organizations within the United Mine Workers of America and the legitimate Labor movement of this country.

"* * * These accomplishments would never have been met, however, if it had not been for the splendid leadership of John L. Lewis, international president of the United Mine Workers of America. It was President Lewis who provided the funds and men to make our success possible. It was his leadership that prevailed on thousands of members to join District 50. Mr. Lewis has given these thousands of workers the benefits that had been denied to them so long.

Fraternally yours, O. E. Gassaway."

page 1485 } I refer now to Plaintiff's Exhibit 63 and wish to read this part down here, which has not been read.

Mr. Mullen: Objection has already been made to that, Your Honor.

The Court: The same ruling. I don't know whether you want me to rule on it again.

Mr. Mullen: We just renew the objection.

The Court: Same ruling.

Mr. Mullen: And we reserve an exception.

Mr. Robertson: "The above map shows the great expansion of District 50, United Mine Workers of America, and how it has been able to bring economic justice to thousands of workers in every section of the country. Starting from Washington, D. C., the organizational program of District 50 extends into practically every State in the country and has welded together many of the hard-fought gains won by labor.

"Many unions, much older than District 50, have never reached, in their greatest days, the success that has come to District 50 under the able leadership of its district officers and International President John L. Lewis.

"To make such an organization possible, other districts of the United Mine Workers of America cooperated, and today, after six years of fighting side by side with the men who mine the nation's coal, District 50 is one of the most aggressive units of the world's greatest labor organization.

"The map also illustrates the great responsibility of District 50 officers, O. E. Gasaway, president; Miss Kathryn Lewis, secretary-treasurer; Charles H. Fell, international board member, and Michael F. Widmann, Jr., organizational director.

"District 50 officers are in constant contact with all regional and sub-regional offices, insure members of District 50 that their rights as union members and Americans are fully protected.

"District 50 has a competent staff of field representatives fully capable of organizing and in negotiating contracts. These representatives are available for all locals anytime any local is in need of assistance.

"District 50 has a capable staff of lawyers to represent its members in every State whether they be involved in litigation before the War Labor Board, the National Labor Relations Board, State Labor or Mediation Boards, Workmen's Compensation Boards, etc. Chief counsel for District 50 is Attorney Alfred Kamin.

"Every dot on the map, indicating regional offices or sub-regional offices, means that Uncle Sam is collecting funds every day through war bond purchases of District 50 members. In practically every section of the United States locals of District 50 have taken a portion of their wages and invested them in the future of America.

"No other union in the country can equal the progress or the extensive program that has always been the aim of the United Mine Workers of America. District 50 has penetrated into areas that other forces of organized labor avoided for years because of the stranglehold giant corporations had on communities.

"In the deep South, in the North, on the West Coast, in the West and in the East, District 50 has marched to victory through the backing of John L. Lewis and the United Mine Workers of America.

"The benefits won by District 50 are now being given to thousands of unorganized workers in various sections of the country.

"Members of District 50 are urged to place a copy of this map in a conspicuous place in their meeting halls. The map shows that the members of District 50, from coast to coast,

Alexander Hamilton Bryan.

have brothers and sisters in the labor movement in all sections of the country. The map also shows that a great deal of organizing is needed to assist the unorganized.

"District 50 members can do their part by helping their field representatives organize plants in their own home communities that have not been organized under the banner of the United Mine Workers of America."

Mr. Allen: If Your Honor please, when Mr. page 1488 } Bryan was on the witness stand, he testified with reference to the identification of this, comparing it, and so forth, and that it was an exact copy. I don't think we asked him with reference to all these other exhibits. From what these gentlemen said in the Judge's chambers, I take it that would be sufficient to identify all of them. They were all identified in the same manner.

Mr. Mullen: I think that you could put him on the stand and let him testify that he compared them and identify them. He need not take up the separate papers, but just do it as a whole.

Whereupon,

ALEXANDER HAMILTON BRYAN,
recalled as a witness for Plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION.

By Mr. Allen:

Q. Mr. Bryan, you testified with reference to Exhibit 63, as to how you compared it, photostated it, and knew that it was an exact copy of the original from which you took it. Can you say the same thing with reference to all of the other exhibits which have been introduced here?

A. I can say the same for all of the exhibits, with the exception of a few of the later copies of the United page 1489 } Mine Workers Journal which I got from another source in Kentucky, and also with the exception of a few copies of the News which I got from a source in Hopewell. All of the photostats have been compared with the originals, either by me directly or under my direct supervision, and I can make oath that they are accurate copies.

Mr. Allen: That is all.

Mr. Robertson: If Your Honor please, that concludes Plaintiff's case in chief.

Mr. Mullen: Of course Your Honor knows that we have reserved the right to further cross-examine Mr. Bryan when further figures are compiled.

Plaintiff rests.

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Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on February 6, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Frances V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James, Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for the Defendants.

Also Present: Robert N. Pollard, Jr.

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PROCEEDINGS.

(The following proceedings were had in Chambers:)

Mr. Allen: If Your Honor please, we have some exhibits we want to offer as part of our evidence-in-chief. If these gentlemen object to their going before the jury, we offer them before the Court for use before the court in any manner in which it is proper to use them. If they do not go before the jury, we would like to have them marked as being offered for use by the Court. We have a list of them here in different journals and documents, with a reference to the page which we wish to have the Court consider. I think the particular part on the page is indicated by some pencil marks, isn't it, Mr. Bryan?

Mr. Bryan: Yes.

Mr. Allen: Unless these gentlemen admit it, we will have to ask Mr. Bryan the usual question whether he prepared

them all and if they are true copies of what was found in the Labor Department in Washington.

Mr. Mullen: Judge, it would be impossible for us to go through this this morning and find out what is in there. We thought your case was closed. It is entirely within the discretion of the Court.

Mr. Robertson: I think the proper way to handle it is the way we handled the other. We offer it, you object to it, the Court excludes them, and we take an exception.
page 1492 } Mr. Mullen: That is one thing, but by doing that we might be leading the Court into error.

The Court: Exactly.

Mr. Mullen: I don't see how we can do that very well because we might just be putting an error in without knowing it for your benefit in case you had to appeal the case.

Mr. Allen: We are not going to take any exception to His Honor's ruling in ruling it out because under the present rules if he initials it it is still a part of the record for him to consider if he wants to do so.

Mr. Mullen: I don't want to be led into an error that nobody is conscious of.

Mr. Allen: We are not thinking of that.

Mr. Mullen: Don't misunderstand me. I don't mean you intend to do it, but it might, as I said, unintentionally do so. I don't know what is in there. I don't know whether it is proper to object or whether it is improper to object. I have no way of finding out at that late date.

Mr. Robertson: Why don't you offer them and let the Court defer its ruling?

The Court: We possibly could do that.

Mr. Mullen: Do what?

The Court: Offer them and let the Court defer its ruling and give you gentlemen an opportunity to look
page 1493 } them over.

Colonel Harris: I don't know when we would have time when we are interviewing witnesses.

Mr. Mullen: 321 documents.

(Discussion off the record.)

(Plaintiff's counsel withdrew for separate conference.)

Mr. Mullen: We are not going to get any chance to go through and see what is in there. It is impossible in the middle of the case.

Mr. Robertson: I haven't asked you to.

Mr. Mullen: I didn't mean that.

(Discussion off the record.)

The Court: Let the record show that you are offering them.

Mr. Allen: They are all photostatic copies of documentary evidence from the Department of Labor in Washington and Mr. Bryan is in position to verify them under the examined or verified copy rules just as he verified those we introduced yesterday. We would have to ask Mr. Bryan a few questions on that subject unless you all will agree that just for the purpose of offering them it may be assumed that he examined them and compared them jut exactly as he did those he testified to yesterday.

Mr. Mullen: We will not object to it on the page 1494 } ground that they are photostatic copies, based on Mr. Bryan's testimony that he has compared them and knows them to be copies, but it is proposed to offer 321 documents. The first knowledge we have had of it is this morning. We don't know whether there are things in there that are admissible or whether there are items that are not admissible. We are forced into the position, without knowing what is in it, to technically object to the introduction of them.

Colonel Harris: We further object on the additional ground that it is an offer en masse and is not the proper way to offer evidence in a trial.

Mr. Allen: We are prepared to offer them separately if you insist, at the proper time.

The Court: The Court will defer its ruling.

(The documents referred to were marked for identification Plaintiff's Exhibit 93.)

Mr. Mullen: When you opened your case you put in certain photographs which we did not object to and let them go in. We have the same thing. We have some photographs.

Mr. Robertson: Just let me look at them.

Mr. Mullen: I think they are much larger than yours and show things up a great deal better.

Mr. Robertson: Let me see them in the absence of the jury. I won't ask to be permitted to take them back to Kentucky like you took ours back to Washington.

page 1495 } The Court: When will you introduce your pictures?

Mr. Mullen: By one of the witnesses today.

The Court: I wonder if we couldn't save some time by you gentlemen viewing the pictures during the recess?

Mr. Mullen: One other question. We were going to bring a man from the C. & O. to testify that the Pond Creek Pocahontas Company is engaged in shipping coal out of Kentucky. They say that with the railroad situation as it is, they can't see why on earth we can't stipulate that, as everybody knows they are in interstate commerce. Can we stipulate that?

Mr. Allen: Of course, the C. & O. Railroad Company is a common carrier engaged in interstate commerce.

Mr. Mullen: We are not speaking of the C. & O. We are speaking of the coal being shipped in interstate commerce. They ship coal to the Lakes region.

Mr. Robertson: We object to the introduction of any evidence in this case about interstate commerce, upon the ground it has nothing to do with the case. It has been admitted here time and again that this case is governed by the substantive law of Kentucky and the procedural law of Virginia. We are going to object right now to the introduction of any evidence on any phase of the case about interstate commerce.

Mr. Mullen: All right.

page 1496 } Mr. Robertson: I haven't had a chance to confer with anybody else on our side, but I think anybody would concede that Pond Creek Pocahontas Company does engage in interstate commerce.

Mr. Lowden: I wouldn't be disposed to put it that way, but we agree with them that they ship coal outside of Kentucky.

Mr. Bryan: It is a question of when they started.

Mr. Allen: If Your Honor please, we had that same question in connection with the C. & O. tunnel up here. It is a question when they started to ship this coal; when that coal started in interstate commerce. You have to show that they were engaged in interstate commerce and mining coal out of this mine, and that has to be shown by the shipment of coal in interstate commerce; not the fact that they have heretofore shipped other coal in interstate commerce, but from this mine.

Mr. Robertson: I don't think Mr. Lowden had quite finished what he had to say.

Mr. Allen: I beg your pardon.

Mr. Lowden: I was merely going to say that "they are engaged in interstate commerce" is a conclusion of law, as I see it, and I don't think we are called upon to agree to that. I think Mr. Robertson's objection should be insisted upon, but rather than make Mr. Mullen bring a man from the C. & O. down here, why not make an offer of proof as to the facts,

and if Your Honor rules it can come in, we will
 page 1497 } agree to the fact; and if Your Honor rules that
 it should not come in, we can state the matter of
 proof in the record. I don't think it is necessary to make a
 man from the C. & O. come in, but I don't think we ought to
 agree that they are engaged in interstate commerce, either.

The Court: During the recess today, couldn't you gentlemen, off the record, talk this matter over, and you can tell Mr. Robertson what you propose to prove by this witness or what his statement will be. Maybe you gentlemen can stipulate it.

Mr. Fred G. Pollard: Subject to Mr. Robertson's objection as to whether it is admissible, we would like to make this stipulation: That prior to July 1, 1949, the coal being mined at Pond Creek Pocahontas No. 1 Mine in Breathitt County, Kentucky, was being shipped out of the State of Kentucky.

Mr. Robertson: I don't want to make any stipulations at this moment. I don't know that the tippie was in operation then. When you get down to a question of dates, as to when it went into operation—

The Court: I suggest that counsel discuss this matter informally during a recess. It might save us a lot of time.

Mr. Mullen: You have already fixed the date when the mine went into operation, in your testimony.

page 1498 } Mr. Robertson: I can't remember everything
 I have said in the case, and I may have said one
 thing wrong.

Mr. Fred G. Pollard: I have one more little item here. Mr. Holt, who is examining the records of Laburnum Construction Corporation, advises us that the statements show the gross sales and the cost of sale and the profit or loss on the sales, and then the operating expenses, general office expenses. Then it has "Other Income" and "Other Expenses." Unless we know what the Other Income and Other Expenses are derived from, we can't tell whether any part of the overhead should be allocated to those items.

At the present time we have not been given access to information which would let us find out from what source Other Income was derived, and what the Other Expenses are.

Under our understanding of what was said by the Court last Monday, we think we are entitled to it. The Court said:

"Yes. I think he is entitled to see the books, any books that have anything to do with your profit or loss. One auditor may determine whether the loss is computed one way or the profit is computed one way, and another auditor may de-

Homer Howard.

termine it another way. That is a question of argument. But I think he is entitled to see the books."

The Court: That was my ruling.

Mr. Allen: If Your Honor please, I under-
page 1499 } stand that Mr. Bryan asked Mr. Holt what he
wanted, and that Mr. Bryan showed him exactly
what he wanted; and so far as we know, Mr. Bryan has had
no information that that wasn't what he wanted, that Mr.
Bryan had not shown him exactly what he wanted.

Mr. Fred G. Pollard: We have been advised by Mr. Holt
that the other income and other expenses have been taped up
so it is impossible for Mr. Holt to determine the source of
the other income or where the other expenses were incurred.

Mr. Robertson: Then I think Mr. Holt should come to
Court and speak for himself in Chambers, and let us find out
what he wants.

Mr. Mullen: It isn't what Mr. Holt wants; it is what we
want.

Mr. Allen: Mr. Holt told Mr. Bryan he had exactly what
he wanted.

The Court: The Court suggests that Mr. Pollard and Mr.
Bryan and one representative of counsel for the Plaintiff, and
Mr. Holt, get together and talk this matter over. The same
ruling the Court made—what day is that?

Mr. Fred G. Pollard: The 29th.

The Court: —on January 29th holds good today. I sug-
gest that such a conference be arranged so there won't be
any misunderstanding.

Mr. Fred G. Pollard: May we meet you at 5:15 at your
office today?

Mr. Allen: 5:15 today? All right.

page 1500 } (The following proceedings were had in open
court:)

* * * * *

HOMER HOWARD

called as a witness for the Defendants, having been first duly
sworn, was examined and testified as follows:

Mr. Robertson: If Your Honor please, the Court will re-
call the ruling of the Court that the witnesses be separated.
I don't know whether there are any of Defendants' witnesses

Homer Howard.

in Court other than those that are supposed to be here or not. If there are, I ask that they go out.

Mr. Mullen: The only one in here who is going to be a witness is Mr. Tom Raney. Your Honor ruled that each of the three defendants could have one man in here.

The Court: That is true.

Mr. Mullen: Mr. Raney is the only one who will be a witness. He is here as an employee of the United Mine Workers.

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Please state your name.

A. Homer Howard.

Q. Are you a member of the Kentucky State Patrol?

A. I am.

page 1501 } Q. What is your rank?

A. Sergeant.

Q. How long have you been Sergeant?

A. Approximately four months.

Q. Were you in that service in July, 1949?

A. I was.

Q. What was your rank then?

A. Corporal.

Q. Did the area over which you were in charge include any counties in Kentucky?

A. It did.

Q. Did it include Breathitt County?

A. It did.

Q. Did any one introduce himself to you in July, 1949, in Salyersville as connected with certain work being done at the No. 1 mine of the Pond Creek Pocahontas Company?

A. Yes, sir; they did.

Q. Please state what he said his name was.

A. Mr. Bryan.

Q. Where was it that you saw him?

A. In Salyersville, Kentucky, in front of the Carpenter Hotel, as well as I remember at this time.

Q. What did he want of you?

A. He asked for some police protection. He informed me that he was contractor. I asked him why he
page 1502 } needed police protection, and he said there was a mob over there that was interfering with his work. We went ahead with the conversation and I asked him if there had been any violence or any crime committed, and

Homer Howard.

he informed me that there wasn't. So I told him we were forbidden to take any hand or any part in labor disputes where there wasn't any crime committed or any violence, and he would have to get permission from higher authority.

Q. Did you make any recommendation to Mr. Bryan as to what he should do?

A. I informed Mr. Bryan if he thought he was in danger of any bodily harm, him or his employees, to go to the Governor or to the Commissioner, and if there wasn't, to try to get along and bargain with those people if he thought there was any threat or any violence or bodily harm to any one.

Q. To try to bargain with the people if he thought there was any danger?

A. That is right, yes.

Q. Do you know whether Mr. Bryan took your advice?

A. From the information I gathered, I suppose he didn't. I don't know.

Q. Did you or not tell Mr. Bryan that you had been shot in the leg or in the arm and pull up your trousers leg or sleeve and show him the wound?

page 1503 } A. I did not.

Q. Have you ever been shot?

A. I have been shot.

Q. Were you shot in the course of your discharge of duty or outside of that?

A. In line of duty.

Q. In what county were you shot?

A. In Johnson County.

Q. Where were you shot?

A. Through the intestines.

Q. Have you ever been shot in the leg or the arm?

A. I have not.

Q. What is the reputation of Breathitt County for law abiding or for law violation?

A. Breathitt County is considered at this time one of the best law abiding counties in Eastern Kentucky.

Q. Do you make many arrests in the counties that you patrol?

A. Our average for each month, that is Troopers, runs twenty on criminal and traffic.

Q. What, if any, percentage of those are for manslaughter?

A. Very, very low.

Q. Do you know why Breathitt County is sometimes spoken of as "Bloody Breathitt"?

Homer Howard.

page 1504 } A. It must have got that name before my time.

It goes by that name, I guess probably all over the United States, but why I don't know.

Q. Were the conditions in 1949 with regard to law abiding or law violation such as to give it the name of "Bloody Breathitt"?

A. It was not.

Q. Did you make some further investigation as to whether there had been any violence at the site of the work?

A. I inquired of several workers that were supposed to have been working there at that time, and they informed me that there was no violence over there other than a picket line.

Mr. Mullen: The witness is with you.

CROSS EXAMINATION.

By Mr. Robertson:

Q. How old are you?

A. 47 years old.

Q. Where were you born and raised?

A. In Magoffin County in Kentucky.

Q. That is the next county to—

A. Breathitt.

Q. Which county out there in Eastern Kentucky is it that the sheriff has been shot and killed within the last year?

A. I think that is in Perry County.

page 1505 } Q. Have you any bullet scars on your legs?

A. I have not.

Q. Can you show the scar on your body?

A. I will have to take this uniform off to do it.

Q. Will you just undo your jacket. I will ask you to do it.

(Witness exhibiting.)

The Witness: Right here.

By Mr. Robertson:

Q. How long did that put you in the hospital?

A. I was in the hospital eight weeks.

Q. How did you happen to get shot? What were you doing when you were shot?

A. Pardon?

Q. What were you doing when you were shot?

Homer Howard.

A. Making an arrest.

Q. Where?

A. In Johnson County.

Q. Is that next to Breathitt County?

A. It doesn't join Breathitt County.

Q. It is in Eastern Kentucky, though.

A. That is right.

Q. How many miles away would you say it is from "Bloody Breathitt"?

page 1506 } A. I would say 50.

Q. You say Mr. Bryan told you there was no violence at his job site in Breathitt County?

A. Mr. Bryan informed me that there was a mob over there.

Q. I will ask you to answer my question. I understood you to testify on direct examination that Mr. Bryan told you there was no violence at his job site on July 26. Is that right or wrong?

Mr. Mullen: If Your Honor please, the witness did not testify any such thing. He was not even questioned as to that.

Mr. Robertson: All he has to do is answer my question and say he didn't, then.

Repeat the question, please, Mr. Reporter.

(The pending question was read by the reporter.)

The Witness: Well, naturally Mr. Bryan made a statement like that or he wouldn't have wanted police protection.

By Mr. Robertson:

Q. I am asking you to answer the question. Did he tell you there was or was not violence at the job site?

A. I wasn't interested in it. I can't answer it definitely either way.

Mr. Robertson: Stand aside.

page 1507 } Mr. Mullen: Much obliged to you.

The Court: Gentlemen, is it understood that the witnesses for Defendants may return to Kentucky?

Mr. Robertson: I think they need him up there, Your Honor, and I would suggest that he go.

Mr. Mullen: I object to that remark, Your Honor. It is entirely improper.

Murvel C. Caudill.

The Court: Gentlemen, disregard that remark.

In other words, witnesses will be excused unless counsel for the Plaintiff requests that they remain. You are excused, Sergeant.

* * * * *

MURVEL C. CAUDILL

a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Please state your name.

A. Trooper Murvel C. Caudill.

Q. Where do you live?

A. I live at Morehead, Kentucky.

Q. Where is that?

page 1508 } A. That is in the eastern part of Kentucky.

Q. How old are you?

A. Thirty-two years old, sir.

Q. How long have you been a State Trooper?

A. Going on 44 months, sir.

Q. Has Breathitt County been in the territory that you have been serving?

A. Yes, sir. I was up there in charge of that post, 9-A, which includes Hazard and Breathitt County. It takes in five counties.

Q. How long were you in charge of that?

A. Approximately six months.

Q. During that time did you happen to make any arrests for manslaughter?

A. No, sir.

Q. What is the reputation, if you know, of Breathitt County, for law abiding citizens or law violating citizens?

A. In my experience up there as far as traffic and criminal arrests, it is very small.

Q. You say you had five counties. How does the criminal record in Breathitt County compare with the other four counties?

A. It compares as one of the lowest.

Q. Have you ever been called on to do anything between an employer and union members?

Murvel C. Caudill.

page 1509 } A. No, sir; no violence whatsoever.

Q. Is Breathitt County a dry county or a wet county?

A. It is a dry county, sir.

Q. Is Johnson County dry or wet?

A. Dry, sir.

Q. Was that true in July, 1949, that is, were they dry then?

A. Yes, sir.

Q. Was the condition as to law violation, what you have stated, was that true in July, 1949?

A. Yes, sir.

Mr. Mullen: That is all.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Caudill, how old did you say you are?

A. Thirty-two, sir.

Q. Where were you born and raised?

A. Rowan County, Kentucky.

Q. Where do you live now?

A. I live at Morehead, sir.

Q. Where is that?

A. That is in Rowan County.

Q. How far is Rowan County from Breathitt County?

A. About 70 miles from the County Seat, sir.

Q. How did Breathitt County get the name
page 1510 } "Bloody Breathitt"?

A. Well, sir, that I would be unable to advise. The only thing I hear is back when they had those fueds back in the early part of time.

Q. They still call it "Bloody Breathitt," don't they?

A. Well, that I would be unable to state.

Q. Now, Mr. Caudill, don't you hear it called "Bloody Breathitt" all the time?

A. No, sir; not all the time, sir.

Q. Isn't it known all over the United States as "Bloody Breathitt"?

A. That I couldn't say.

Q. You say you don't know that it is known now as "Bloody Breathitt"?

A. You hear it once in a while. Once in a while you hear someone state that.

Q. What are the five counties that are in your territory?

Allen Young Watkins.

A. Perry, Knott, Leslie, Breathitt and Wolfe.

Q. Have you been shot?

A. No, sir.

Q. Did you ever hear of their making any moonshine in Breathitt County?

Colonel Harris: We object to that, if the Court please.

Mr. Robertson: If you object to it, I withdraw page 1511 } draw it.

Stand aside.

The Court: Any further questions?

Mr. Mullen: That is all.

Mr. Robertson: He may go to Kentucky.

The Court: Stand aside.

(Witness excused.)

Mr. Mullen: Call Mr. Watkins.

Whereupon,

ALLEN YOUNG WATKINS,

a witness on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Please state your full name.

A. Allen Young Watkins.

Q. Where do you live, sir?

A. In Jackson, Kentucky.

Q. How old are you?

A. Thirty-seven.

Q. In what county is Jackson?

A. That is in Breathitt County.

Q. Is that the county seat?

A. Yes, sir; Jackson is the county seat of Breathitt.

Q. Are you a lawyer?

page 1512 } A. Yes, sir.

Q. By education?

A. Yes, sir.

Q. Do you hold any position now in the county?

A. Yes, sir; I do.

Q. What is it?

Allen Young Watkins.

A. County Attorney of Breathitt County.

Q. How long were you practicing law over there?

A. I started practice in the spring of 1946.

Q. How far is Jackson from Evanston, where the Pond Creek Pocahontas Company was developing a mine?

A. It is approximately 40 miles.

Q. What are your duties as County Attorney?

A. My duties are to prosecute all cases, offenses in the courts inferior to the Circuit Court, and to assist the Commonwealth Attorney in prosecutions of charges in the Circuit Courts.

Q. Mr. Watkins, is Kentucky an Indian name?

A. That is my understanding from the history of the state, that the name did come from an Indian name.

Q. And what does it mean in the Indian language?

A. It always has been said that Kentucky in the Indian language meant dark and bloody ground.

Q. Is that name applicable now?

page 1513 } A. No, sir; I don't think so.

Q. It is ancient history?

A. Yes, sir; I think it is.

Q. Do you know how Breathitt County is called "Bloody Breathitt"?

A. I have heard through older people, the stories have been handed down that years ago, before my time, there were feuds in Breathitt County, and that there was a good deal of violence during those earlier years that caused Breathitt County to have that name.

Q. Was that before or after the county was opened up by roads and so forth?

A. That is back in the pioneer years of the county, I would say. That was back before we had railroads, highways, and when we had very few schools.

Q. Does the county of Breathitt have a slogan by which the county is now known?

A. Yes, sir; it does.

Q. What is it?

A. About 17 years ago Dr. Ora Latham Hatcher, a leader in education in America who was a resident of Richmond, Virginia, came to Breathitt County as a leader in the child guidance program. She started the program in Breathitt County. It is one of the first counties I understand in the country where her program was started. It was more
page 1514 } or less the guinea pig for her program. Dr. Hatcher was in the most remote sections of that

Allen Young Watkins.

county for a number of years, and she had heard this story about the early days of Breathitt and she had also heard that Breathitt had been referred to as "Bloody Breathitt" in earlier years. She made the statement there, after she had been over the greater part of Breathitt, that that name should not apply, that Breathitt should be referred to as "Beautiful Breathitt." As a result of that, on nearly all of the official stationery that slogan is printed, "Beautiful Breathitt."

Q. Mr. Watkins, do you know the general reputation of Breathitt County for law and order?

A. Yes, sir; I do.

Q. What is it?

A. It is good.

Q. How does it compare with the other Eastern Kentucky counties?

A. It compares favorably. It is as good as the average, and I will say better than some.

Q. What is the character of the population with reference to religion?

A. The people of Breathitt County are very devout. Most any home that you go into you will find the Bible the favorite book.

Q. Did the County authorities learn of or take notice of the testimony that was being given here against page 1515 } the character of Breathitt County?

A. They did.

Mr. Robertson: If Your Honor please, I just want the record to show that I realize that this testimony is taking a scope that puts it outside of all rules of evidence that I ever heard of, but I do not object to it.

Mr. Mullen: If Your Honor please, I object to that statement because they themselves have put witness after witness on the stand to give this county a terrible reputation, and naturally we are entitled to show that that is not the reputation of the county.

Mr. Robertson: I say I have no objection to anything said so far, but I just want you to know that I am not so ignorant that I don't realize I could object if I wanted to.

The Court: Proceed.

Mr. Mullen: I realize that you are not as ignorant as some of our counsel whom you recommended go to night school.

Mr. Robertson: Of course I am not responsible for them.

The Court: Proceed.

Allen Young Watkins.

By Mr. Mullen:

Q. Do you know whether any other of the county authorities had intended to come here?

A. Yes, sir. The sheriff of Breathitt County had been contacted, and the County Judge had been contacted.

Q. Did something happen to prevent them page 1516 } from coming?

A. This is the tax collection period now, in the State of Kentucky, and the Sheriff wasn't able to come because of that; and the County Judge's father-in-law is in a very serious condition now, and they expect him to die at almost any time, and he wasn't able to come because of that condition.

Q. You came in their place?

A. Yes, sir.

Q. You said that the reputation of Breathitt County for law and order is good. Was that the condition in July, 1949?

A. Yes, sir, it was.

Q. And for years prior to that?

A. Yes, sir, in my memory, it has been.

Mr. Mullen: The witness is with you.

CROSS EXAMINATION.

By Mr. Allen:

Q. I didn't quite get your last name. What did you say it was?

A. Watkins.

Q. Where were you born?

A. Just about two miles from Jackson, Kentucky, in Breathitt County.

Q. Where were you reared?

page 1517 } A. In Breathitt County. I have always lived in Jackson or not more than three miles from Jackson.

Q. You now hold what position?

A. County Attorney?

Q. Of Breathitt County?

A. Yes, sir.

Q. Is that elective or appointive?

A. It is elective.

Q. So you were elected by the vote of the people to that office?

A. Yes, sir.

Allen Young Watkins.

Q. Do you know how far the records of Breathitt County go back with reference to prosecutions and convictions?

A. No, sir. I understand that sometime in 1870 there was a fire in the Court House that burned most of the records, if not all of the records.

Q. Would you say that your records of criminal prosecutions, then, at least go back to 1870?

A. Yes, sir, I think so.

Q. And any person examining those records could come here and tell us how many prosecutions you had had?

A. Yes, sir, I think so.

Q. Did you make any such examination of the records before you came here?

A. No, sir, I did not.

page 1518 } Q. So you cannot tell us whether the record shows that the prosecution are more or less than they were back in the days when you admit that Breathitt County deserved the name of "Bloody Breathitt"?

A. No, sir. I am going by reputation alone, rather than statistics.

Q. You claim that the people have reformed and that prosecutions are not as numerous, but you haven't examined the records to be able to inform us accurately on that subject?

A. That is true, sir.

Q. However, it still has the name and is mentioned to this day as "Bloody Breathitt" sometimes?

A. Yes, sir. It sometimes is referred to by people who don't live in Breathitt County, and they are thinking of those older days, I am sure.

Q. The people in Breathitt County sort of put on a soft pedal about it, don't they?

A. They are not proud of it.

Q. Now, with reference to the slogan about "Beautiful Breathitt," do you claim you have a beautiful country with reference to scenery, mountain views, and so forth?

A. Yes, sir.

Q. Was this lady who suggested that slogan talking about the people or the scenery?

A. She evidently must have taken in both.

page 1519 } Q. So you claim you have beautiful people, too?

A. Beautiful people in character.

Q. Are you being paid for coming here; and if so, how much?

A. No, sir, I am not being paid for coming here. It has

Prock Jackson,

been mentioned to me that if I want to submit a bill, that my expenses, my actual expenses for coming down here will be paid. I haven't as yet submitted a bill. I don't know that I will. I discussed this matter with our County Judge, and he proposed that the Fiscal Court of Breathitt County—

Q. He proposed what?

A. That the Fiscal Court of Breathitt County make an appropriation to pay my expenses down here, but I don't know if that proposal will go through.

Q. To protect Breathitt County against the reputation that it is being given?

A. Yes, sir; I think it is my duty to do so.

* * * * *

page 1520 {

* * * * *

PROCK JACKSON

called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Colonel Harris:

Q. What is your name, please, sir?

A. Prock Jackson.

Q. How do you spell that?

A. P-r-o-c-k.

Q. How old are you, Mr. Jackson?

A. Thirty-three.

Q. Where were you born?

A. I was born in Magoffin County, Kentucky.

Q. Were you raised over there?

A. Yes, sir.

Q. Did you ever work for the Laburnum Construction Corporation?

A. Yes, sir.

Q. When did you go to work for them?

A. Sometime in April, 1949, along about the first of April.

Q. Did you quit working for them?

A. Yes, sir.

Q. When did you quit working for them?

Prock Jackson.

page 1521 } A. I guess it was around the last of April.
Q. Did you quit to get a job elsewhere, or were
you discharged by Laburnum Corporation?

A. To get another job, sir.

Q. What kind of work had you been doing for Laburnum Corporation?

A. Labor.

Q. When you quit working for Laburnum Corporation, where did you go to work?

A. I went to work for the Allen Codell Construction.

The Court: Face the jury, Mr. Jackson.

By Colonel Harris:

Q. Was that in Breathitt County that you were working for Allen Codell?

A. Yes, sir.

Q. What kind of work were you doing for Allen Codell?

A. When I first went to work, I did labor work. Later I went on a jackhammer.

Q. When you left Laburnum and went over to Allen Codell, did you make more money or less money?

A. I made more money.

Q. How much an hour more did you make with Allen Codell than you had been making with Laburnum?

A. I made 20 cents, as laborer, more on the hour.

page 1522 } Q. Did you take part in any way in getting the
common laborers organized at Allen Codell?

A. Yes, sir, I did.

Q. What part did you take? Did you or not write a letter?

A. To Mr. Tom Raney, yes, sir.

Q. Were you there, working for Allen Codell, on July 26, 1949?

A. Yes, sir.

Q. Where were you working at that time?

A. I was working in the rock quarry.

Q. That was where Allen Codell was working?

A. Yes, sir, Allen Codell.

Q. How far was that rock quarry from the schoolhouse?

A. About 100 yards, I guess.

Q. Did you keep on working in the rock quarry, or did you quit work, when Mr. Hart and the men with him came to the schoolhouse?

A. They came to the rock quarry first. I quit work when I seen them acoming.

Prock Jackson.

Q. What kind of work were you doing at the time they came to the rock quarry?

A. I was running the jackhammer.

Q. Did you put the jackhammer out of your hands and go with them up to the schoolhouse?

A. No, sir. I laid it down and came off the hill
page 1523 } to the toolhouse.

Q. Did you get at any place where you could see the men at the schoolhouse?

A. You could see them from the rock quarry; it is straight across the creek about a hundred yards.

Q. Did you get where you could hear anything that went on at the schoolhouse?

A. No, sir, I didn't.

Q. Did you see any men at that time that were staggering around in a drunken condition?

A. No, sir.

Q. At the rock quarry, did you do blasting?

A. Yes, sir.

Q. What kind of blasting was done down at the rock quarry?

A. We did two different types. We did the heavy, where we would shoot off big ledges; and then we would have to re-drill and shoot up big boulders that came out, what is called pop shots. That is what we called them.

Q. Along in July, 1949, was there any customary time of day at which shots were fired in the quarry?

A. Yes, sir. We always shot around between 11:30 and 12:00, and then in the afternoon just before quitting time, about 5:00 o'clock.

Q. How many shots ordinarily would be fired
page 1524 } between 11:30 and 12:00?

A. At that time, we would have to shoot the pop shots, which sometimes would run around 50, maybe, sometimes more; just whatever we had drilled up and loaded.

Q. This letter that you said you wrote to Tom Raney, did you write it while you were still working for Laburnum, or after you left them in May and went to Allen Codell?

A. I wrote the letter while I was working for Laburnum.

Q. Did you ever hear anything from Raney or anybody else in reply to the letter?

A. No, sir, I did not.

Colonel Harris: I think that is all. You may take the witness.

Prock Jackson.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Jackson, what union do you belong to now?

A. I belong to the United Mine Workers.

Q. You are here to testify for them?

A. Yes, sir.

Q. What union did you belong to when you left Laburnum?

A. None at all.

Q. Did you join the United Mine Workers before you went to work for Codell, or afterward?

A. No, sir, I joined the UCW after I went to work for Allen-Codell.

page 1525 } Q. Did you join the UCW before you went to work for Codell, or afterward?

A. Afterward.

Q. How soon afterward?

A. It was in July.

Q. Within 30 days?

A. No.

Q. Within what length of time after you went to work for them?

A. I will say a month and a half.

Q. Why did you join the UCW?

A. That is the first man that I had seen come around to organize with.

Q. They wouldn't let you work there unless you joined them, would they?

A. No, sir, they didn't say nothing about that.

Q. I say, you couldn't work on that job unless you joined the UCW, could you?

A. We had a majority on the job.

Q. I say, you couldn't work on that job unless you joined up with them, could you?

A. After we organized, yes.

Q. I say, when you went to work and got your job there, you couldn't go to work and stay at work there unless you joined up with the UCW, could you?

page 1526 } A. At that time we were all working, and nobody belonged to the union.

Q. I say, when you went to work for Codell, you couldn't go to work and stay at work with them unless you joined up with the UCW, could you?

A. I could work with them when they weren't organized.

Prack Jackson.

Q. That isn't what I asked. I am asking you, Mr. Jackson—

Mr. Mullen: If Your Honor please, the witness has answered the question directly.

The Court: Do I understand that when you went there, Codell was not organized by UCW?

The Witness: He was not.

By Mr. Robertson:

Q. I am asking, when they did organize, in order to stay at work you had to join up or get out, didn't you?

A. Yes, sir.

Mr. Robertson: Stand aside.

Colonel Harris: There is one question I neglected to ask him, if I may, Your Honor.

RE-DIRECT EXAMINATION.

By Colonel Harris:

Q. Were you at the meeting on the 24th when a vote was taken as to whether or not they would strike?

A. Yes, sir, I was.

page 1527 } Q. Did you make the motion or second the motion?

A. I seconded it.

.

Mr. Robertson: If Your Honor please, we have no objection to any pictures which have been shown us.

Mr. Mullen: By agreement of counsel, then, Your Honor, we will introduce these pictures, and shall refer to them as we go along. They are too big to set on that easel all together.

(Discussion off the record.)

Mr. Mullen: Do you want to mark these?

The Court: I think it would be well to have them marked.

Mr. Mullen: Mark this Defendants' Exhibit 2 in evidence.

(The photograph referred to was marked Defendants' Exhibit No. 2 and received in evidence.)

Mr. Mullen: Now we introduce, Your Honor, a page 1528 { picture showing the Laburnum office and Buck Hughes.

(The photograph referred to was marked Defendants' Exhibit No. 3 and received in evidence.)

Mr. Mullen: As Defendants' Exhibit No. 4, we introduce a photograph taken from the air, showing the entire outlay from tipple No. 1 down to the houses referred to in the evidence.

(The photograph referred to was marked Defendants' Exhibit No. 4 and received in evidence.)

Mr. Mullen: As Exhibit No. 5, we introduce a photograph showing the location of the store that has been referred to and the houses that either have been built before or since, I don't know. These pictures were taken as of the present time.

(The photograph referred to was marked Defendants' Exhibit No. 5 and received in evidence.)

Mr. Mullen: As Defendants' Exhibit No. 6, we offer a photograph showing, among other things, the rock quarry that has been referred to as being operated by the Codell people.

(The photograph referred to was marked Defendants' Exhibit No. 6 and received in evidence.)

Mr. Mullen: As Defendants' Exhibit No. 7, we offer a photograph showing the road leading from the store across the railroad, which has been referred to in the evidence.

page 1529 { (The photograph referred to was marked Defendants' Exhibit No. 7 and received in evidence.)

Mr. Mullen: As Defendants' Exhibit No. 8, we introduce a picture showing the Tipple No. 1 and the offices of Laburnum and the road leading therefrom.

(The photograph referred to was marked Defendants' Exhibit No. 8 and received in evidence.)

William Orbin Hart.

Mr. Mullen: And as Defendants' Exhibit No. 9, we introduce a picture showing the tippie, the headhouse, and Tippie No. 1, and the road leading around to the top of the tippie where the coal mining operations were going on.

(The photograph referred to was marked Defendants' Exhibit No. 9 and received in evidence.)

Mr. Mullen: We will give the jury a few minutes to look at them, and then I will call another witness.

The Court: Yes.

(Jury examining photographs.)

Mr. Mullen: Please call Mr. W. O. Hart.

Whereupon,

WILLIAM ORBIN HART,
called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. What is your full name, sir?
page 1530 } A. William Orbin Hart.

Q. How old are you?

A. Forty-four.

Q. Where do you live?

A. I live in Clarksburg, West Virginia, at the present time.

Q. What is your business?

A. Representative of District 50, United Mine Workers of America.

Q. Do you also do work for United Construction Workers?

A. Assigned to the UCW, that is right.

Q. Assigned to the UCW.

What are your duties as such representative?

A. To organize the unorganized, and to negotiate contracts when they expire at the various local unions, with companies.

Q. Were you connected with the Pikeville office, or is it Paintsville?

A. Pikeville office, Region 58, yes, sir.

William Orbin Hart.

Q. Does that include Breathitt County?

A. Yes, sir.

Q. How long were you there connected with the Pikeville office?

A. I went to work at Pikeville on March 21, 1949, and stayed until May 15, 1950.

page 1531 } Q. On May 15, 1950, were you transferred to your present location?

A. That is right, Region 22, Clarksburg, West Virginia

Q. Who is the head of that region?

A. August Rouse.

Q. You were sent there to take his place, or as his assistant?

A. I was sent there to assist him in negotiating contracts.

Q. In July, 1949, had you had any contract with any employees of Laburnum Construction Corporation, which was doing work at the place called Evanston, in connection with the development of the Pond Creek Pocahontas Company's Mine No. 1?

A. Yes, sir.

Q. When did you first contact any of them?

A. On July 8, around noon. The boys were eating their lunch. Harvey Robinson and I contacted them and signed up four men.

Q. What was the work being done by the four men?

A. They were laborers.

Q. Did you contact any of the carpenters at that time?

A. Oh, I talked to several of them, the few of them that were around the job eating their lunch.

Q. For what purpose did you contact the laborers?

A. To organize them, to put them into a union.

page 1532 } They didn't have any organization.

(Documents shown to Plaintiff's counsel.)

Mr. Robertson: No objection.

By Mr. Mullen:

Q. Were these the four cards that you signed up at that time? (Handing documents to witness.)

A. They are.

Mr. Mullen: We offer as Defendants' Exhibit 10, membership application and check-off authorization, District 50, United Mine Workers of America, signed by Green Stacy; as No. 11, a like membership application and check-off authoriza-

William Orbin Hart.

tion signed by Matt Miller; as No. 12, like membership application and check-off authorization signed by Lee Bach; and as No. 13, a like application and check-off authorization signed by Jerry Barnett.

(The documents referred to were marked Defendants' Exhibits No. 10, 11, 12, and 13, and received in evidence.)

By Mr. Mullen:

Q. When did you next contact or get in touch with any of the employees of Laburnum Construction Corporation on that job?

A. On July 12, I was at the Codell Construction job at Mine No. 2, which had the sloping shaft, and signed up several of those boys, and they were telling me that the page 1533 } other boys wanted to see me. So I beat it back to the store. I didn't get to see them any more until the 24th.

Q. "Them"? To whom are you referring?

A. The Laburnum employees.

Q. What Laburnum employees did you get that message from?

A. I don't know. The Laburnum boys told me the Laburnum boys were wanting to see me.

Q. I mean, what classification?

A. Laborers.

Q. You say you were up at the Codell Company at that time. Were you or not organizing them?

A. That is right, I was organizing all of the Codell.

Q. What class were you organizing there?

A. Laborers, helpers, and drillers.

Q. They had not been organized?

A. No, sir.

Q. Do you know whether their skilled workers had been organized?

A. Yes, sir.

Q. In what union were they?

A. Operating Engineers, A. F. of L.

Q. On June 12, you didn't see the Laburnum employees because you got back to the store too late. Did you leave any word for them?

page 1534 } A. I did.

Q. What was it?

A. I left word for them to attend a meeting on Sunday, the 24th, at the Carver Schoolhouse.

William Orbin Hart.

Q. When did you contact Laburnum Construction Company's office?

A. July 13.

Q. Are you certain of that date?

A. Yes, because I put in a long distance call for two other companies, Allen-Codell and the Spurlock Food Company at Huntington, and Allen-Codell at Winchester, Kentucky.

Q. It is alleged in the Notice of Motion that on or about the 14th; but you say it was the 13th?

A. I say it is the 13th, because I called the other two companies the same day.
page 1535 }

Q. What happened when you called the Laburnum office in Richmond?

A. I called the Laburnum office and asked for the person who was in charge of the construction job in Breathitt County. Whoever it was asked me to wait a minute. Someone came to the telephone, identified themselves, but I don't recall who the person was. I told them that I was a representative of the UCW, that we had several of his people signed up into the UCW and we wanted a recognition conference. The reply was that they were dealing with the A. F. of L., that their people belonged. I said, "No, the helpers and the laborers do not belong to any union at all, and the UCW has them signed up," and to give me a letter. I gave Mr. Hunter's address and gave them my address, to write a letter telling us when they would come in and sit down with us for a conference.

I told the person I had heard that they were going to build three or four hundred houses, just hearsay. Their reply was that they didn't know anything about the three or four hundred houses.

Q. Did you in that conversation make it clear what classification of employees you were asking them to recognize the union for?

A. I told them the laborers and helpers didn't belong to any union at all and we represented them.
page 1536 }

Q. Did they or not promise to write a letter?

A. I asked them to write a letter, and I don't know what his reply was. I gave them the address and told them to write us.

Q. Do you know whether he asked you not to do anything until you talked to him again?

A. No, sir; there wasn't any such statement as that made.

Q. Did you at that time say to whoever you were talking with, or not, that the territory in which they were working

William Orbin Hart.

was United Mine Workers' territory and that they would have to join up if they worked there?

A. No, sir; I didn't make any statement of that kind. I did say that Region 58 covered Breathitt County.

Q. Did you or not make any threat about what you would do if they didn't sign up for the laborers?

A. No, I didn't make any threats. The only thing is, I said we had the Beckett Construction job down there and the Wheelwright job, the link belt, rather.

Q. Did you organize the laborers at those two jobs?

A. I did.

Q. Were they recognized by the employer?

A. They were.

Q. What did you next do after you talked to Mr. Bryan? When were you next up in that territory, the site of that work?

A. I wasn't back up in there any more until page 1537 } the 19th. I was back in there on the 19th contacting those fellows there at the Codell Construction job.

Q. Did the Codell Construction Company employees take any action at that time to gain recognition?

A. They all signed up. They were all signed up.

Q. That was the Codell Construction Company?

A. That is the Allen-Codell, which signed up, and also Codell signed up something, and the Codell people had taken action, yes.

Q. What did they do?

A. They struck.

Q. On what date?

A. The 19th, in the afternoon before the second shift went on.

Q. That strike was for what purpose?

A. Union recognition and a contract.

Q. Did you at that time hear anything from the laborers on the Laburnum job?

A. Yes, sir. The boys asked Justice Cole, or some of the boys there told me, the Laburnum boys told me, they were going to strike the following Tuesday if we didn't get in and do something for them.

Q. Did you thereafter meet with Laburnum?

A. The 24th I did.

page 1538 } Q. Where did you meet on the 24th?

A. Carver School House.

Q. Who met with you there?

William Orbin Hart.

A. All of the laborers and helpers in Breathitt County. It was for all the jobs on the Pocahontas Coal Company project there: Codell, Allen-Codell, and the Laburnum employees.

Q. Did you make any report to that meeting of what you may have accomplished for them?

A. I reported to the Codell employees what had taken place in the negotiations previous to this, and also told the Laburnum boys that we had given Mr. Bryan plenty of time to answer our call by letter, and that he hadn't taken such action, and therefore it was up to them to take whatever action they deemed necessary. The Allen-Codell boys did the same.

Q. Do you know how many of the laborers of Laburnum were present at that meeting?

A. The best I can recall, it was about 9.

Q. Do you know what the total number of laborers on the Laburnum job was?

A. Some said 18, some said 15. I didn't know.

Q. Did those nine at that meeting, or whatever number was there, the Laburnum laborers, take any steps to become members of the UCW or District 50?

page 1539 } A. They did. I obligated all of them.

Q. What do you mean by "obligated"?

A. We have an obligation in our rules and regulations that they always take before becoming a member, and I read that and they all taken it.

Mr. Mullen: Give me a copy of Plaintiff's Exhibit No. 2 or 3, please. We have a copy here.

The Court: Is there any objection to his using his copy?

(Discussion off the record.)

By Mr. Mullen:

Q. Do you want to refer in there to the obligation they took?

A. Page 29 is where it is. I know where it is. Right here.

Q. Did you read that to them?

A. I did.

Q. Did they all obligate themselves to comply with it?

A. They did, that is right.

Q. That was on the 24th of July?

A. That is right.

Mr. Mullen: I would like, gentlemen, to read this now:

William Orbin Hart.

"I do sincerely promise, of my own free will, to abide by the laws of the union; to bear true allegiance to, page 1540 } and keep inviolate the principles of the United Construction Workers; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on all occasions and to the extent of my ability the members of our organization.

"That I will not, unless officially authorized, reveal to any employer or boss the name of anyone a member of our union. That I will assist all members of our organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the union or seeking better remuneration for his labor; and as only by standing together can workers improve their lot, I promise to cease work at any time I am called upon by the organization to do so. And I further promise to help and assist all brothers in adversity, and to have all eligible workers join the union that we may be able to enjoy the fruits of our labor; and that I will never knowingly wrong a brother or see him wronged, if I can prevent it.

"To all this I pledge my honor to observe and keep as long as life remains, or until I am absolved by the union."

By Mr. Mullen:

Q. That is known as obligating the men who had joined the union?

page 1541 } A. That is right; yes, sir.

Q. Were there many people at that meeting on the 24th?

A. Yes, sir; there was a large number there.

Q. Did they all stay there through the meeting? Were they there when you obligated these people?

A. I asked all the people who did not belong to the union to retire from the room.

Q. Did they do so?

A. They did.

Q. Did the Codell employees, their common laborers, obligate themselves at the same time?

A. Yes, sir.

Q. After they had obligated themselves what steps, if any, did the Laburnum laborers take to organize?

A. Jerry Barnett made a motion to strike, that they had waited long enough for a letter to be written by Mr. Bryan

William Orbin Hart.

and to strike. Prock Jackson seconded the motion, and the vote carried unanimously.

Q. Was Jerry Barnett one of the laborers of Laburnum?

A. He was.

Q. The question I asked you, however, was, what steps did those eight or nine or ten laborers take to organize at that meeting after they had obligated themselves?

A. Oh, they elected stewards.

Q. Who did they elect stewards?

page 1542 } A. Jerry Barnett and Ossie Lovely.

Q. What does a steward do?

A. He participates in negotiations of contracts and takes care of all the grievances on the job.

Q. That is on behalf of the members?

A. On behalf of the membership.

Q. After having a unanimous vote to strike, what, if any, plans were made to carry out the strike?

A. They asked the Codell Construction boys to support them in the strike and to come over the next day. When we approached the job, they would quit the job, leave the job, and join the pickets. The Codell boys then voted that they would go along with them and support them in this strike.

Q. Which Codell boys are you referring to?

A. That is the Codell Construction.

Q. The Codell Construction Company is the one also known as the Codell Fauleoner Company?

A. Yes, sir.

Q. Were they the ones you say were already on strike?

A. Yes, sir.

Q. Then the other Codell people in that meeting were from what company?

A. Allen-Codell.

Q. Did they vote to strike?

A. They did.

page 1543 } Q. So all three were on strike?

A. Yes, sir. When we approached the job, the Allen-Codell boys walked off to join us and so did Laburnum.

Q. For what purpose were they going to strike?

A. For union recognition and union contract, in the way of more wages and other conditions of employment.

* * * *

Q. We stopped where you had described what occurred at

William Orbin Hart.

the meeting on the 24th of July, 1949, at Carver. What was the next step that you took?

A. It was in the meeting that if it rained on Monday, the next day, we wouldn't be there because of the condition of the roads. So on Tuesday I met the Codell Construction employees at the store, at the forks of the road just off the foot of the hill.

Q. Where did you go from there?

A. We went from there to the Allen Codell Rock Crusher just above the store, and the Allen Codell boys joined us, several of them joined us there.

Q. You say at the rock crusher. What were they doing there?

page 1544 } A. How is that?

Q. What were they doing at the rock crusher?

A. They were crushing stone for the roads.

Q. Is that a quarry?

A. That is right, a stone quarry.

Q. Did they join you there or not?

A. They did.

Q. Was there any delay in their joining you?

A. No, sir. When we told the shovel operator that *were* were there for the strike, he shut his shovel down, and the truck was backing under the shovel to be loaded. He told the boys, he said, "It is down until we get a contract." He moved his shovel out of the pit down below where it wouldn't be in any danger.

Q. Is that where they blast the rock?

A. Yes, sir.

Q. Was any blasting being done at that time?

A. They had several holes drilled to be blasted, and when they walked off the job one of the boys—I don't recall who it was—said they had some shots there to put off, and they stayed and put off the shots before coming down and joining with us.

Q. You went on from there to what point?

A. To the school house, which was being done by the Laburnum Construction Company.

page 1545 } Q. I wonder if you can show on those pictures where the rock quarry and the schoolhouse were. Will you look at these. Does that show the rock quarry (showing Defendants' Exhibit 6 to the witness)?

A. This looks like it right here, I am not sure (indicating). Yes, this is it right here, I believe.

Q. What is at this point (indicating)?

William Orbin Hart.

A. This is the new store building which has been built here.

Q. Where is the store that you referred to?

A. It was sitting over on this side of the road, over here.

Q. In which direction is the schoolhouse you are referring to?

A. The schoolhouse is back up this way.

Q. Did I understand you to say that some of the Codell boys met you at the store?

A. That is right. This building wasn't in here then. They were scattered out in here.

Q. Then you went—

A. From there to here.

Q. That is where the Codell Construction—

A. Allen-Codell was here.

Q. And some of them joined you there?

A. That is right, and from there we went on page 1546 } up this way. The schoolhouse isn't in here.

Q. Put that one down for the moment. Can you show on this the quarry?

A. Yes, here is the quarry right here.

Q. What is this right here?

A. That is the schoolhouse, if I am not mistaken. The company has built a new building in here of some kind. I don't know, it is for storage or something. I don't know what it is. It is connected with the store.

Q. What is this junction of the road there?

A. This road here, when you come off the mountain this way, you come across here. This goes to No. 2 mine and this goes down to No. 1 mine.

Q. That goes down to what you call the tipple?

A. That is right.

Q. How many men went with you to the schoolhouse where Laburnum was working?

A. Between 20 and 30.

Q. Where were those men from?

A. The Codell Construction Company employees, laborers and helpers.

Q. Were there any Allen-Codell men with you?

A. Yes, sir.

Q. Were there any outsiders?

A. I don't recall any.

page 1547 } Q. The people who went with you, you say, were the employees of Codell?

A. That is right.

Q. When you got to the schoolhouse what took place?

William Orbin Hart.

A. I walked up and was talking to the steward. Who he was I don't know. I told him we were there, that the Laburnum Laborers and helpers were going to strike and we would like for them to go along with us and to support it, and they could join if they wanted to. It was up to them. But what I wanted was the laborers and the helpers, and while I was talking one of the laborers came over and signed, one who hadn't previously signed before.

Q. What did the steward say?

A. He told me, "You will have to see our business agent. He is at the tippie. You go down there and talk to him and we will be down as soon as we eat our lunch."

Q. Did any one of your people there have anything to say out of the way?

A. One boy started to talking, and I told him to be quiet, that I would handle the situation.

Q. Did you or not tell them that it was your job, you came there to take it over and they couldn't work unless they joined your union?

A. No, sir; I did not.

Q. Were the men with you armed or not?
page 1548 } A. No, sir.

Q. Were they drunk?

A. I didn't see any one, no.

Q. Were or were not any threats made against the carpenters there at the schoolhouse?

A. No, sir.

Q. Did you see any physical contacts between any of the men with you and any of the carpenters there?

A. No, sir; it was impossible for there to be physical contact.

Q. Why?

A. Because there were saw horses standing between us with lumber piled on it, two-by-eights. We were on one side and they were on the other.

Q. Was that a lumber pile or lumber they were working on?

A. They were sawing. What they had used to saw had been stacked up there.

Q. That separated you and your people from the carpenters?

A. Yes, sir; plus the foundation which they were working on, which they were building.

Q. Were there any laborers of Laburnum there?

A. Yes, sir.

William Orbin Hart.

page 1549 } Q. Do you know how many were there?
A. I recall three.

Q. Who were they, if you recall?

A. Jerry Barnett and Burl King, and who the other was I can't recall, I guess.

Q. Had they been in the meeting at Carver on the 24th?

A. Yes, sir, Jerry had. I don't know about Burl. I can't recall him being there, but I believe he was.

Q. Were they or were they not expecting you and the company, the Codell people, to come at that time?

A. Yes, sir; they were.

Q. You went from there to what point?

A. To the tipple.

Q. Did you leave any people at the schoolhouse?

A. No, sir.

Q. What appeared to be the relationship between the men you brought and the men at the school house so far as any question of enmity was concerned?

A. Very friendly.

Q. Did the steward tell you who he wanted you to contact?

A. Yes, sir.

Q. Who was that?

A. Bert Preston.

Q. Who was he?

page 1550 } A. He was business agent for the A. F. of L. carpenters, of the Paintsville local union?

A. Did the carpenters there, the laborers, say anything as to what they would do? Was it dinnertime?

A. Yes, sir.

Q. Did they go up to the tipple with you?

A. Some did follow along behind us.

Q. On the way to the tipple from the schoolhouse did you hear any shots?

A. Only the rock quarry shots was all.

Q. Tha was the quarry that you have shown the jury on these pictures?

A. Yes, sir.

Q. Do these pictures show the road you went along from the schoolhouse up to the tipple?

A. This one does (indicating Defendants' Exhibit 8).

Q. In what direction was the schoolhouse?

A. In this direction (indicating).

Q. You came up—

A. I came from the schoolhouse. This is the direction from

William Orbin Hart.

the schoolhouse in which we came. We came down through here, and this is the road leading off to the tipple down this way, down into here. We came up this road here, you see, right up to the tipple.

Q. What is this?

A. This is where Mr. Bryan had his office right page 1551 } here, employment office, where he signed on employees.

Q. Did you and the people with you pass through there and go on down somewhere by the tipple?

A. Yes, sir. We parked our cars right here. There were four cars parked right there.

Q. Where did you go to?

A. We came down here and crossed up to the tipple.

Q. When you got to the tipple, did you find the carpenters and other employees of Laburnum up there?

A. Yes, sir. They were eating lunch.

Q. Were there any buildings around there?

A. A small toolhouse.

Q. Did you find Bert Preston?

A. Yes, sir. The first man I contacted was Oscar Wireman, committeeman, and then we went on and met Bert Preston.

Q. Who was Oscar Wireman working for?

A. He was working for the Pocohantas Coal Company.

Q. Then you went on and who did you next contact?

A. There were two fellows sitting at the end of the building as you go around in front of the tipple. There were two men sitting here on my left and I asked them where was Bert Preston. They said he was around in the building. I went on around the back way and came back in through the door, and there were several boys sitting in there, page 1552 } about five or six. There might have been more.

Q. In what building was that?

A. Just an old toolhouse that they had there.

Q. How large a house was that?

A. Oh, maybe eight by ten or twelve, something like that, about eight by twelve. I don't think it would be much over that, if it was that big.

Q. Was Bert Preston in there when you got in there?

A. Not at first, no.

Q. Did you talk to the men in there?

A. Yes, sir; I talked to several of the men who were sitting around, telling them what the benefits of the organization were and talking to John Arnett. He asked me what

William Orbin Hart.

were the benefits of the United Mine Workers, District 50, and UCW, and I was explaining the benefits that could be received from joining our organization and told them that the laborers and helpers had requested us to take them in and we were taking them in.

Q. Was Arnett a carpenter or a laborer?

A. He was a carpenter.

Q. Did you or not ask the carpenters to join you at that time?

A. No, I didn't ask the carpenters to join us. I asked them to join with us in the strike, but not to join the union.

Q. Did you and Arnett have any words?
page 1553 } A. I was just explaining what could be done by joining District 50, a part of the United Mine Workers, one of the districts, and the UCW was affiliated with the United Mine Workers. He said "If you are representing UCW as the Mine Workers as such, you are a damned liar." Then I went ahead and explained it to him and told him he was wrong and showed him the connection and how it was, that UCW was only affiliated with District 50 or the United Mine Workers.

Q. Did anybody have to separate you when he called you a liar?

A. No, I just laughed at him. He didn't understand what I was talking about.

Q. Then had Bert Preston arrived by that time or not?

A. Yes, sir; Mr. Preston came in and then I told him that the laborers and helpers were going on strike and wanted them to join in with us and help us to support it. He said, "Hart, you know that we can't strike." He said, "We have a contract with Bryan of the Laburnum Construction Company, and we would be breaking our contract if we struck, but if you will establish a picket line our men will honor it."

Q. Was there any conversation between you two as to the nature of the picket line?

A. He told me to put up a legal picket line.
page 1554 } I asked him what he considered a legal picket line, and he looked at me and laughed and said, "You know what a legal picket line is."

Q. What did you do then?

A. I sent some boys and told them to get me a piece of cardboard and I would make a temporary picket sign to serve the purpose while we were there at that place.

Q. Did Bert Preston ask you as to whether you would have a picket line there the next day?

William Orbin Hart.

A. Yes, sir. He said "We will honor a picket line as long as it is established, but when there isn't any picket line we will sure as hell work."

Mr. Mullen: I would like to get the exhibits which are the picket signs, please.

Mr. Robertson: Those picket signs have 1, 2, and 3 on them to represent the order in which they were introduced and the chronological order in which they were put up, I think.

By Mr. Mullen:

Q. I hand you Plaintiff's Exhibit No. 23 and ask you what it is.

A. The temporary picket sign which was used on the job that particular day.

Q. Who prepared that?

A. I did.

page 1555 } Q. After you prepared it, what did you do with it?

A. This one that was nailed up, it looks like, on the side of the building right at the corner at the tippie.

Q. Can you show the jury on this picture just where it was put (referring to Defendants' Exhibit 8)?

A. No, this tippie here hides the building. Right here is the corner of the place right here. This sign was posted right on this corner right there temporarily. It didn't stay there more than an hour, maybe two. It stayed there until I got ready to leave.

page 1556 } Q. Were the men there to support the picket line?

A. There were several men there.

Q. How do you form a picket line in the country like that?

A. If you are on the highway, on each side of the highway. You can't block a highway or a public passageway.

Q. That is in the country?

A. Yes.

Q. Did you prepare any further picket signs?

A. I made two at that particular time.

(Object handed to the witness.)

A. I made this (indicating), but these holes weren't in it when I made it, I don't think.

Q. Where was that put?

William Orbin Hart.

A. That was one that was carried in one of the boys' hands. This looks like the one the boys had out in front of the tippie when the tippie foreman came out and asked were we picketing the tippie, and I told him no. He said, "One of your boys is in front of the tippie," and I went out and called him back and told him to come back from in front of there because he was liable to get hurt.

Q. Did you move him to some other point?

A. Yes, sir. He was in the crowd. I brought him back out in front of the tippie.

Q. Were you on any road? Were those signs on any road?

A. Yes, sir. On the 28th we posted some signs, page 1557 } had some signs kind of decently printed to put up.

Q. Is that one of the signs you refer to? (Referring to Plaintiff's Exhibit 25.)

A. Yes, sir, it is. This one here was made by Edward Cole's wife.

Q. There is on it in pencil an arrow.

A. I did this myself, because it was referring to carpenter helpers and not carpenters.

Q. You say the mine people asked you to move it from the side of the tippie?

A. Yes, sir. Mr. Haslam—what position, General Manager, I think, of Pond Creek Pocahontas Coal Company—asked me to move—not to post the sign on the tippie and to move our pickets back up to the road.

Q. Show where you moved them toward the road.

A. I moved them from here back to right in here (indicating on Defendants' Exhibit 8), where this road turns over the hill, I moved them back right in there.

Q. Past the Laburnum office, and so forth?

A. That is right.

Q. You put a picket sign here?

A. I put it right up here, just over the bank from the road.

Q. That is the road that they go to work on the tippie?

A. Yes, sir. These boys here all moved back, page 1559 } and I was the last man to leave the tippie, to see that every man was removed as requested by the Coal Company.

Q. So, to go to work on the tippie, they had to pass this picket sign here?

A. Yes. That was their main passageway through there.

Q. Did you then sign up other laborers of Laburnum?

William Orbin Hart.

A. I didn't, but under my supervision some of the other boys signed them up.

Q. Did that include those who had already obligated themselves?

A. Yes, sir. They all signed cards.

Q. They all signed there under your supervision?

A. Yes, sir.

Q. Then what was done with the cards?

A. I turned them over to Mr. Hunter, who was the Regional Director at that time.

Q. His office was at Pikeville?

A. Yes, sir.

Q. Were you working under Mr. Hunter?

A. Yes, sir, under his supervision.

Q. Were those cards preserved there as part of the records of the office?

A. Yes, sir.

(Documents handed to Plaintiff's Counsel.)

page 1559 } Mr. Robertson: No objection to any of them.

By Mr. Mullen:

Q. Do you know whether the four who had signed for you on the 8th of July again signed up on the 26th?

A. I believe they did. I know three of them did.

Mr. Mullen: If Your Honor please, we want to introduce as Defendants' Exhibit No. 14, Membership Application and Checkoff Authorization, United Construction Workers, Affiliated with United Mine Workers of America, signed by George P. Miller.

(The document referred to was marked Defendants' Exhibit No. 14 and received in evidence.)

Mr. Mullen: As Defendants' Exhibit No. 15, like Application and Checkoff Authorization, signed by Hargus Howard, who is the man that the expert said no two people could sign that rotten.

(The document referred to was marked Defendants' Exhibit No. 15 and received in evidence.)

William Orbin Hart.

Mr. Allen: State to whom they are made.

Mr. Mullen: Membership Application and Checkoff Authorization, United Construction Workers of America, Affiliated with the United Mine Workers of America. "I hereby request and accept membership in the United Construction Workers, affiliated with the United Mine Workers of America."

Mr. Allen: You can just state it, and not read it.

Mr. Mullen: The same, as Defendants' Exhibit 1560 } Exhibit 16, for Lee Bach.

(The document referred to was marked Defendants' Exhibit No. 16 and received in evidence.)

Mr. Mullen: The same, as Defendants' Exhibit 17, for Ossie Lovely.

(The document referred to was marked Defendants' Exhibit No. 17 and received in evidence.)

Mr. Mullen: The same form of Application and Checkoff Authorization, as Defendants' Exhibit No. 18, signed by Jerry Barnett.

(The document referred to was marked Defendants' Exhibit No. 18 and received in evidence.)

Mr. Mullen: The same instrument, as Defendants' Exhibit No. 19, signed by Earnest Howard.

(The document referred to was marked Defendants' Exhibit No. 19 and received in evidence.)

Mr. Mullen: As Defendants' Exhibit No. 20, like Membership Application and Checkoff Authorization, signed by John Jordan.

(The document referred to was marked Defendants' Exhibit No. 20 and received in evidence.)

Mr. Mullen: The same form of Membership Application and Checkoff Authorization, as Defendants' Exhibit No. 21, signed by Burl King.

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page 1561 } (The document referred to was marked Defendants' Exhibit No. 21 and received in evidence.)

Mr. Mullen: The same Membership Application and Check-off Authorization, as Defendants' Exhibit No. 22, signed by Luther Litteral.

(The document referred to was marked Defendants' Exhibit No. 22 and received in evidence.)

Mr. Mullen: The same Membership Application and Check-off Authorization, as Defendants' Exhibit No. 23, signed by Matt Miller.

(The document referred to was marked Defendants' Exhibit

Mr. Mullen: The same form of Membership Application and Checkoff Authorization, as Defendants' Exhibit No. 24, signed by Avis Salyers.

(The document referred to was marked Defendants' Exhibit No. 24 and received in evidence.)

Mr. Mullen: The same form of Membership Application and Checkoff Authorization, signed by Green Stacy, as Defendants' Exhibit 25.

(The document referred to was marked Defendants' Exhibit No. 25 and received in evidence.)

Mr. Mullen: Membership Application and Checkoff Authorization on the District 50, United Mine Workers, form but otherwise the same as those heretofore filed, page 1562 } signed by Green Trusty, as Defendants' Exhibit No. 26.

(The document referred to was marked Defendants' Exhibit No. 26 and received in evidence.)

Mr. Mullen: Like form of Membership Application and Checkoff Authorization, the same as Defendants' Exhibit 26, signed by Dan Combs,—

Mr. Robertson: Let the record show whether that is District 50 or UCW.

William Orbin Hart.

Mr. Mullen: I said the same as the previous.

Mr. Robertson: Which is it?

Mr. Mullen: All right. District 50.

Mr. Robertson: I didn't understand.

Mr. Mullen: I offer that as Defendants' Exhibit 27.

(The document referred to was marked Defendants' Exhibit No. 27 and received in evidence.)

Mr. Mullen: And as Exhibit No. 28, Membership Application and Checkoff Authorization on the form of District 50, United Mine Workers of America, signed by Green Conley.

(The document referred to was marked Defendants' Exhibit No. 28 and received in evidence.)

The Court: Would this be a good stopping point for you?

Mr. Mullen: Let me read one of those, and I will stop.

Mr. Robertson: Read one of each, please.

page 1563 } Mr. Mullen: All right, I will read one of each.
(Reading Defendants' Exhibit 26:)

"Membership Application and Checkoff Authorization
"District 50, United Mine Workers of America

"I hereby request and accept membership in District 50, United Mine Workers of America, and authorize it to represent me in my behalf to negotiate and execute any and all agreements pertaining to wages, hours, and conditions of work. This power to act in my behalf expressly revokes and shall supersede all previous authorizations which I may have given to any other person or organization for the purpose of representing me as an employee. The Constitution, Laws, Rules, Policies, Regulations and Edicts of the above Union and all amendments thereto shall be binding upon me. In consideration for services rendered and to be rendered by the above Union, I agree to pay all reasonable amounts of money lawfully required as a condition to obtain and maintain membership in good standing.

"My employer, therefore, is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my

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employer, and this authorization and assignment shall be
 page 1564 } irrevocable for the term of the applicable con-
 tract between the Union and the Company or for
 one year, whichever is the lesser, and shall auto-
 matically renew itself for successive yearly or applicable
 contract periods thereafter, whichever is the lesser, until I
 give written notice to the Company and the Union at least 60
 days and not more than.....days before any periodic
 renewal date of this authorization and assignment of my
 desire to revoke the same.

Signature.....

Clock No.....

Address.....

Employed by.....

Social Security No.....

Date....."

These three so read.

The other one, since you wish me to read both: (Reading
 Defendants' Exhibit No. 25.)

"Membership Application and Checkoff Authorization
 United Construction Workers
 Affiliated with United Mine Workers of America

"I hereby request and accept membership in the United
 Construction Workers, affiliated with the United Mine
 Workers of America, and authorize it to represent me in my
 behalf to negotiate and execute any and all agreements pre-
 taining to wages, hours, and conditions of work. This power
 to act in my behalf expressly revokes and shall supersede all
 previous authorizations which I may have given to any other
 person or organization for the purpose of repre-
 page 1565 } senting me as an employee. The Constitution,
 Laws, Rules, Policies, Regulations and Edicts of
 the above Union and all amendments thereto shall be binding
 upon me. In consideration for services rendered and to be
 rendered by the above Union, I agree to pay all reasonable
 amounts of money lawfully required as a condition to obtain
 and maintain membership in good standing.

William Orbin Hart.

"My employer, therefore, is hereby authorized to deduct from my wages and turn over to the officer or representative, as designated in the applicable agreement, all such amounts of money above outlined and limited to the amounts provided in the applicable agreement between the above Union and my employer, and this authorization and assignment shall be irrevocable for the term of the applicable contract between the Union and the Company or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is the lesser, until I give written notice to the Company and the Union at least 60 days and not more than.....days before any periodic renewal date of this authorization and assignment of my desire to revoke the same."

This one is signed, has a signature, "Green Stacy," and the address. It has no Social Security number, as some of them do.

If Your Honor please, I believe that is all.
page 1566 } The Court: Sheriff, recess the court until
2:15.

(Whereupon, at 1:00 o'clock p. m., a recess was taken until 2:15 o'clock p. m., of the same day.)

page 1567 } AFTERNOON SESSION.

2:15 p. m.

Whereupon,

WILLIAM ORBIN HART,

.

FURTHER DIRECT EXAMINATION.

By Mr. Mullen:

Q. Mr. Hart, when you were leaving the toolhouse or before you left the toolhouse, did you have any further conversation with either Bert Preston or with Arnett?

A. I had a conversation with Bert Preston.

Q. What was that about?

William Orbin Hart.

Mr. Robertson: You said the schoolhouse?

Mr. Mullen: I meant the toolhouse.

The Witness: I was talking to Bert Preston and I told him that we wanted him to honor the picket line, and he referred that he would honor the picket line as long as there were pickets on the job, and that they would go back to work when there wasn't a picket line on. He said "We will sure as hell work when there isn't any pickets here."

By Mr. Mullen:

Q. Did you have anything to say about bringing in any other men to keep the picket line going?

A. I told him if it was necessary I could bring
page 1568 { 500 men from Beaver Creek.

Q. What did he say to that?

A. He said, "I don't believe a damned word of it", that "I have as many friends on Beaver Creek as you have."

Q. Then did he say anything about what might happen if you brought those men over?

A. I said "There could be some butt kicking going on," and he said, "Yes, it will go on both ways," and laughed and walked out.

Q. Did you have any further talk with John Arnett?

A. John replied to me, too. They were laughing about it as we walked out. There weren't any harsh remarks made. We were all laughing together when I walked out of the toolhouse.

Q. Did the laborers who signed up that day do so of their own accord, or were they forced to sign?

A. They did it of their own accord.

Q. The larger majority of those had been obligated, you said, already, on the 24th?

A. The large number of them had.

Q. Did you make any threats as to what would happen if they didn't sign up?

A. No, sir.

Q. Did you make any threat against the carpenters if they crossed the picket line?

page 1569 { A. No, sir.

Q. How long did the group of men who came with you stay around there?

A. When we went up into the road they were all gathered at the road and waited until I came up. I was the last man who left the tipple. They came up into the road and some few of them stayed there by the picket line and the rest of us

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went up to the store and got our lunch. Some scattered off and went home.

Q. Did you see Mr. Bryan that day?

A. Yes, sir.

Q. Will you state where you saw him?

A. I saw him as you cross the railroad tracks, the road leading up to No. 1 and No. 2 mine, one comes down the road to No. 1 and one goes up to No. 2. I met him right in the forks of the road, he and two other gentlemen.

Q. Will you look at this picture, please, and show where you met him?

A. Yes, sir, right here. Mr. Bryan stood right in here (indicating) and I stood right here. We were waiting here. I saw him come up the road and I stood right along in here (Referring to Defendants' Exhibit 7).

Q. Please state what occurred between you and Mr. Bryan at that time.

A. Mr. Bryan identified himself and I identified myself, who I was and whom I was representing and presented my credentials. We told Mr. Bryan what we wanted, that we were wanting union recognition, wanting him to sit down and negotiate a contract. Mr. Bryan was very, very nasty from the beginning. He wanted to know what in the hell did I mean by closing his job down, and the tipples still operating. I said "Your boys have went on strike, the tipples boys belong to District 30 of the United Mine Workers, and Tom Raney would give them orders as to what for them to do." He said, "Who is Tom Raney?" I said "Tom Raney is the executive board member of the United Mine Workers with an office at Pikeville."

Q. Had Tom Raney given you any orders?

A. No, sir; Tom Raney wasn't my boss.

Q. What, if any, explanation did you make to Mr. Bryan at that time as to what employees of his you were organizing and asking recognition for?

A. I was after the laborers and the helpers. He said, "I called your office and told them that I could get in touch with you here." That was referring to me. I said, "Well, if you did call the office it was too late anyway because the strike had already been planned and you had plenty of time to write us a letter telling us when you would meet us." That hadn't been done and therefore we struck.

Q. What did he say to that?

page 1571 } A. He said he would not recognize the UCW at all.

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Q. Did both you all get mad?

A. Very—Yes. Mr. Bryan was very nasty from the beginning and of course I got hot too after so long a time. I had never met any nastier person.

Q. Did your talk there result in any decision or any contract or any negotiation?

A. No, sir. He refused to negotiate at all.

Q. Did he say anything to you about going to work himself?

A. Yes. He said he and the two gentlemen who were with him would go up to the schoolhouse and finish it themselves, and I laughed at him and told him he wouldn't dirty his little white hands with a hammer and nails and go up there to go to work.

Q. How many men were with you when you met him?

A. I believe there were three—wait a minute, four. I remember the other boy who was with them. There were four of us.

Q. Had any of them been drinking?

A. Not that I knew of, no.

Q. Had you been drinking?

A. No, sir. I don't drink.

Q. Then did you stay around there longer or what did you do?

A. In a few minutes I went over to the store page 1572 } and then got in the car and went on home. The other boys did the same.

Q. All of that was Tuesday the 26th of July?

A. That is right.

Q. Were you over there on the 27th?

A. No, sir.

Q. Did any one go over in your place?

A. Mr. Hunter assigned Harvey Robinson to go in my place that day.

Q. Did you on the 27th of July have any further talk with Mr. Bryan or with any of the employees of the Laburnum Construction Company?

A. Yes, sir; I did.

Q. Where and when?

A. Mr. Hunter and I were in Paintsville to meet Mr. White and James Codell for negotiations. We waited there some time, around 11 or 11:30 and Mr. Swan was on the job. We got a call from Mr. Codell saying it was impossible to meet him and to make other arrangements for us to talk. Mr. Swan did. We came out onto the street and I ran into some of the carpenters. I was talking to them, and they asked

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where I could meet him. I said there is a misunderstanding, it seems like with, you fellows as to this whole
page 1573 } thing, going along with us. They said "Well,
now, Hart, if you want to talk, we will get our
business agent and we will round up the boys and find out
what it is."

I said, "O. k." Mr. Hunter was with me. They went after Mr. Preston, who lives some few miles away from Paintsville. They went out and rounded up the boys and set the meeting for two o'clock at the Carpenters Union Hall. At two o'clock we met. I went in to the meeting with him. Hunter went on in to Pikeville.

Q. What, if any, explanation did you make to the carpenters in that meeting?

A. I told the carpenters that we were not asking them to join the UCW, that they had a contract and we would not ask them to violate it. We did want them to honor our picket line, and that if they would honor ours then we would honor theirs in case they had trouble, that we would both work together and would gain more for our membership.

There wasn't any remarks made right in the beginning. We started to adjourn, and a fellow by the name of Patrick, who identified himself as a steward on the job at the tippie, called two other fellows back in the back end of the hall, some ante room, and came back and they talked a few minutes and then came back and told me, says, "Hart, we will not cross your picket line." Then Bert Preston raised up and said, "I am
page 1574 } responsible for all of this." I said, "Bert, why
do you say that?" He said, "Because if we had
organized them in the beginning we wouldn't
have had this trouble."

Q. Did anything else occur there or that was the end of the meeting?

A. That was the end of the meeting.

Q. When did you next go to the job site?

A. The 28th.

Q. What happened there then?

A. There was nothing in particular happened from there on up to the first.

Q. Were there or were there not pickets on the job?

A. Yes, sir; there were pickets on the job at all times. I checked the pickets each day.

Q. Were some of the signs still up?

A. Yes, sir.

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Q. You say nothing happened until August first. What happened on August first?

A. On August first I went back over to the job site, there at the picket line, and there were several carpenters there, carpenters, laborers, pickets and everybody else. There were several there. Bob Poe, who identified himself as the business agent for the Salyersville Local, said, "Hart, we have formed a new local union, and we are not going to have those damned Johnson County fellows in it. We are only having the Breathitt, Knott and Magoffin County men
page 1575 } in the organization, and we are wondering if we do the work ourselves, would you withdraw your pickets."

I said, "Do you mean to say you want to scab on these helpers and laborers?"

From that talk—there is a building just above the road from Mr. Bryan's office, I called the boys up there in that meeting. I told them the same thing that I told Paintsville boys, that we weren't trying to take their local union away from them, that we weren't asking them to join. If they wanted to come into our organization as a unit, okay, but if they didn't we wouldn't take them at all unless they did come in as a unit. We wanted them to honor the picket line and we would honor their contract and we would all get along together. After some discussion there, the boys pulled out and went home.

Q. Was Mr. Bryan there?

A. He was in his office.

Q. Did Mr. Bryan also suggest to you that the carpenters could do the work and didn't have any need of the laborers?

A. I don't know whether Mr. Bryan did or not, but it was mentioned in the meeting. Bob Poe is the man I remember talking to me about it.

Q. At that time did Mr. Bryan ask you to talk to anybody on the phone?

page 1576 } A. Yes. I was down over the bank just a little. Mr. Bryan called me. I believe he hollered at me and told me someone wanted to talk to me over the telephone. I found out it was the President of the Richmond Building Trades Council, or something. I don't know who he was, but I know he was with the Richmond Building Trades Council. He told me they had a contract with Mr. Bryan and that it covered all of them.

I said "Like hell it does." I said, "These fellows down

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here don't belong to any union. They are working for 90 cents an hour."

He said "What is your rate?"

I said "\$1.36."

He said, "It is a good rate," and hung up.

Then Mr. Bryan had a document there by the side of him and held it out to me. He said it was a contract. I said, "It is too late now, because these boys didn't belong to any union when I came in here."

I suggested to Mr. Bryan there that we get together, that he recognize our union and that we work together. He said it couldn't work with the A. F. of L. and the UCW. I said "I don't see why it can't because we are doing it in other places."

He said, "Well, it just won't work."

Q. Did he at that time say anything about having a meeting with the A. F. of L. people?

page 1577 } A. No, not at this particular time, but later after I had been out on the picket line or to my car there, he came out and wanted a list of who to get in touch with besides me. Apparently he didn't want to settle it with me. I told him to get in touch with Mr. Hunter or Tommy Davis. Tommy Davis was the coordinator of the Regional Directors in the south. I gave him a list of all the directors in District 50, UCW.

Q. Who employed Tommy Davis?

A. UCW.

Q. Did you go over to Salyersville to attend a meeting on August 2?

A. Yes, sir. Mr. Bryan while we were talking over there asked me would I meet him in Salyersville on the next day, that some A. F. of L. officials were being sent in there and he asked me if I would be there that day, and I told him I would, at ten o'clock at the Carpenter Hotel in Salyersville.

Q. Was the meeting held?

A. Yes, sir.

Q. Were you admitted to the meeting?

A. No, sir.

Q. Did Mr. Bryan make any further request of you on that date?

A. He came out of this meeting or out of the hotel and said that he would try to get me in to the meeting,
page 1578 } that the fellows were in there talking then and he would see what he could do about getting me in. He went back into the meeting. Then about an hour

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later, or something of that nature, he came back. I was half way in the block of the building between the Carpenter Hotel and the Coffee Cup. He told me that the A. F. of L. officials would not let me in the meeting, that I didn't have any business in there, and that he couldn't recognize the UCW, for if he did the A. F. of L. would pull the other men, their men, off his other jobs. He asked me to withdraw the pickets, and I refused.

Q. Did you have any further talk with Mr. Bryan after that at any time?

A. No, sir; I don't recall any.

Q. Did you go back to the job site any after that?

A. Yes, sir.

Q. What was going on there?

A. There wasn't anything going on, only just some of the boys were still there.

Q. Some of your boys or his boys?

A. Our boys.

Q. Now let's go back a little. Did you ever make a bet with anybody as to whether the work would be completed by Laburnum Construction Corporation?

A. No, sir.

Q. Did you or not at a later date meet one page 1579 } of the carpenters in Prestonsburg or elsewhere and say to him, "You showed good judgment in not going back to work, because I had men with rifles stationed above you and below you."

A. No, sir.

Q. The rates that you mentioned to him—were they subject to negotiation, was that what you were seeking?

A. Any rates submitted by representatives of labor are negotiable.

Q. He testified that a form of contract was submitted to him by Mr. Hunter on the fifth of August. Are those forms of contract absolutely required or are they subject to negotiation?

A. The contract which Mr. Hunter had and which we representatives always kept on hand are guides to negotiations, either to be added to or to be taken away from.

Q. It is alleged in the notice of motion filed by the Plaintiff in this cause that said Hart stated that the territory in which this work was being performed was the territory of the United Construction Workers and that he intended to take

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over all of the Plaintiff's work at the Pond Creek Pocahontas Company in Breathitt County and that this statement was made to Mr. Bryan.

Is or is not that correct?

A. No, that isn't correct, that statement.

Q. It is also alleged, as to a talk with Mr. page 1580 } Bryan over the phone, said Hart then stated that the United Construction Workers had closed down a job of Beckett Construction Company at Wheelwright, Kentucky and unless the Plaintiff agreed to recognize immediately the United Construction Workers as the sole bargaining agent for the employees of the Plaintiff on said project in Breathitt County, Kentucky, he, William O. Hart, a field representative and officer of the United Construction Workers in District 50, would close down the work of Plaintiff in Breathitt County, Kentucky.

Is or is not that correct?

A. No.

Q. Did you ever make any such statement as that?

A. I don't recall any, no.

Q. It is further alleged that you stated that you were acting under the orders of Tom Raney and carrying out Raney's orders.

Were you ever under the orders of Tom Raney?

A. No, sir; I have never been under any orders of Tom Raney.

Q. Did he give you any orders about this strike?

A. No, sir.

Q. It is further alleged that said Hart went to the schoolhouse being constructed by Plaintiff in Breathitt County, Kentucky, being job No. 340 of the Plaintiff, and then went to the coal tipple in Breathitt County, Kentucky, page 1581 } being part of the Job No. 322 of Plaintiff, and immediately began haranguing the workmen employed by Plaintiff with threats and abuses, and then demanded that these men immediately become members of the United Construction Workers.

A. I did not.

Q. Then it is further alleged in said notice of motion that said Hart further in violent language said to these men that they would not be permitted to continue their work unless they became members of the United Construction Workers.

Did you tell them that?

A. No, sir.

Q. Did you ever hear anybody threaten to shoot any of the

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carpenters or workmen or employees of Laburnum if they crossed the picket line or went to work?

A. No, sir.

Q. Did you ever make any such threat?

A. No, sir.

Q. After you left the schoolhouse and were on the way to the tippie did anybody in your group fire any shots or pistols?

A. No, sir.

Mr. Mullen: If Your Honor please, at this time I would like to introduce as exhibits by the Defendants, the constitution of the United Mine Workers of America adopted, the rules of District 50, effective March 16, 1949, and page 1582 } the rules of the United Construction Workers in effect—

Mr. Robertson: You are just introducing the same three things we have already introduced?

Mr. Mullen: Yes, but you may have introduced them in a manner that we can't use them.

Mr. Robertson: I don't object, but just don't put that one in that had 20 pages left out.

Mr. Mullen: I never had one that was defective.

The Defendant offers as Defendants' Exhibits 29 rules of District 50 United Mine Workers of America, March 15, 1949.

(The documents referred to were marked Defendants' Exhibit 29 and received in evidence.)

Mr. Mullen: Now the Defendant introduces as Exhibit No. 30 the rules of United Construction Workers, affiliated with United Mine Workers of America, revised March 15, 1949.

(The documents referred to were marked Defendants' Exhibit 30 and received in evidence.)

Mr. Mullen: We now introduce the constitution of the International Union, United Mine Workers of America, adopted at Cincinnati, Ohio, on October 11, 1948, effective November 1, 1948, and ask that it be marked Defendants' Exhibit No. 31.

page 1583 } (The document referred to was marked Defendants' Exhibit 31 and received in evidence.)

By Mr. Mullen:

Q. Have the UCW, the United Construction Workers, mem-

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bers and the A. F. of L. members worked peacefully together in Breathitt County?

A. They have.

Q. And in eastern Kentucky?

A. Yes, sir.

Mr. Mullen: If Your Honor please, may I confer with my associates just a minute?

The Court: Certainly.

We will recess for five minutes, gentlemen.

(Brief recess.)

page 1584 } Mr. Mullen: You may cross-examine.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Hart, how old did you say you are?

A. Forty-four.

Q. Where were you born and raised?

A. I was born in Knott County, Bath, Kentucky; raised in Letcher County at Seco.

Q. What county were you born in?

A. Knott County.

Q. How far is that from Breathitt County?

A. Oh, it is about 50 miles. I wouldn't want to be exact on it.

Q. What county did you say you were raised in?

A. Letcher County.

Q. How far is that from Breathitt County?

A. About 90 miles from my home.

Q. It is all in mountainous country in Eastern Kentucky, isn't it?

A. Yes.

Q. In the summer of 1949, were you living in Pikeville?

A. No, sir. I was living in Letcher County, in Fleming Kentucky.

Q. But you know the town of Pikeville pretty well, don't you?

page 1585 } A. Oh, sure. I have worked there before.

Q. That is the County Seat of Pike County, isn't it?

A. That is right.

Q. How big a town is it?

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A. Oh, I don't know.

Q. About 10,000?

A. I wouldn't want to be quoted on what the population is, because I don't know.

Q. Do you know what the name of the Sheriff there was in the last 12 months; not the one there now, but the one who preceded the one in office right at this moment?

A. Yes, sir, I knew him.

Q. What was his name?

A. Lloyd Conway.

Q. He was shot and killed when he went out of the house one night, within the last six months, wasn't he?

A. I don't know.

Colonel Harris: We object to that as immaterial, if the Court please.

Mr. Robertson: If Your Honor please, they have brought in here about what a law-abiding section this is. I just want to show that the Sheriff was shot within the last six months in Pikeville, which is the seat of this headquarters.

Colonel Harris: That is not in Breathitt County.

Mr. Robertson: No. It is the next county to page 1586 } it. I have been out there. It is very close to it.

The Court: I will allow it for what it is worth.

Colonel Harris: Exception.

By Mr. Robertson:

Q. Don't you know, as a matter of fact, that within the last six months, at night the Sheriff of Pike County got a call that there was trouble, and went out of his home to get in an automobile, and was shot in the back and killed?

Colonel Harris: We object to that, because he could not possibly know what was said to the Sheriff when the Sheriff got a call and went out; and on the further grounds that we interposed in our objection a moment ago.

Mr. Robertson: I withdraw the question.

By Mr. Robertson:

Q. Don't you know, as a matter of fact, that the Sheriff of Pike County has been shot and killed within the last six months?

Colonel Harris: We object to that. That is a repetition. He just asked it two minutes ago.

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The Court: I sustain the objection. That was the question you asked first, which I allowed. I allowed the question.

Mr. Robertson: But you don't allow this one?

The Court: I allowed it. I think this is the page 1587 } same question you asked first.

By Mr. Robertson:

Q. Don't you know, as a fact, that the Sheriff of Pike County has been shot and killed within the last six months?

Colonel Harris: We object to it. That is the third time he has asked that question. Your Honor let him ask it over my objection the first time.

The Court: I understood, Mr. Robertson, that he answered that question. That was the first question you asked him. Mr. Harris objected, and I overruled the objection and allowed him to answer; and my recollection is that he answered the question.

Mr. Robertson: I don't recall that he did.

The Court: Look at the record.

Mr. Robertson: If he answered it, I don't want to go over it.

The Court: The Court may be in error. Check it.

(The record was read by the reporter as follows:)

"Q. He was shot and killed when he went out of the house one night, within the last six months, wasn't he?

"A. I don't know."

By Mr. Robertson:

Q. I am going to ask you if you don't know it to be a fact from your common knowledge, from living in page 1588 } that territory, that the Sheriff of Pike County was shot and killed within the last 6 or 8 months?

A. I have heard that he was. I didn't see it.

Q. Do you doubt the truth of it?

A. Sir?

Q. Do you doubt the truth of it?

Colonel Harris: We object to that as argumentative.

Mr. Robertson: I have the man on cross examination, Your Honor.

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Colonel Harris: That doesn't mean he can argue with him.

Mr. Robertson: I withdraw that, if he objects to that.

By Mr. Robertson:

Q. You have heard it?

A. That is right.

Q. Are you a member of the United Construction Workers?

A. No. United Construction Workers? Sure. I have been in District 50, United Mine Workers, and United Construction Workers, too.

Q. So you are a member a United Construction Workers, are you?

A. Not as such.

Q. Are you a member of the United Construction Workers?

A. I said "not as such."

page 1589 } Q. What do you mean by that?

A. What do I mean by it?

Q. Yes.

A. I mean that I am not a member of the United Construction Workers as such.

Q. What did you mean when a moment ago you said you were a member of it?

A. District 50 and UCW, we work with the same. I am assigned to the UCW and District 50.

Mr. Robertson: If Your Honor please, I think I am entitled to have the witness answer the question.

By Mr. Robertson:

Q. I asked you: Are you or are you not a member of the United Construction Workers?

A. As such, no.

Q. What do you mean by "as such, no."?

A. I have already stated.

Mr. Robertson: I don't think he has answered the question, Your Honor, and I ask the Court to instruct him to answer the question.

The Court: See if you can make a fuller explanation of the answer, Mr. Hart.

The Witness: I am a member of District 50. The UCW is an affiliate organization.

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page 1590 } By Mr. Robertson:

Q. Are you an agent of the United Construction Workers?

A. I am assigned, yes, sir.

Q. Are you an agent of District 50?

A. Yes, sir.

Q. Are you a member of District 50?

A. Yes, sir.

Q. Are you a member of the United Construction Workers?

A. As such.

Q. What?

A. As such.

Q. What do you mean by that?

A. I have explained it once.

Q. All right. What do you mean when you say you are a member of the United Mine Workers, but don't put the "as such" or any qualifications to that?

Mr. Mullen: I object. He hasn't stated he was a member of the United Mine Workers. He said United Construction Workers.

By Mr. Robertson:

Q. Didn't you say a moment ago you were a member of the United Mine Workers?

A. District 50, United Mine Workers.

Q. Didn't you say a moment ago you were a member of the United Mine Workers of America?

page 1591 } A. District 50, United Mine Workers of America.

Mr. Robertson: Read the question back there, and see whether he said it inadvertently or not.

(Discussion off the record.)

By Mr. Robertson:

Q. Are you a member of the United Mine Workers of America?

A. No, sir.

Q. You are a member of District 50?

A. District 50, United Mine Workers.

Q. How long have you known Tom Raney?

Q. About how long?

A. I have known Tom Raney for a number of years.

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A. Oh, 15 years.

Q. Do you and he call each other by your first names?

A. Why, sure.

Q. How long have you known David Hunter?

A. I have known David Hunter since '45.

Q. Do you and he call each other by your first names?

A. Yes, sir.

Q. You have worked under his orders out of Hopewell, in the Hopewell area, before you went to Breathitt County, Kentucky, haven't you?

A. No, sir.

Q. Have you ever worked under his orders before you went to Breathitt County?

A. No, sir.

Q. Are you and he on friendly terms?

A. The best of friends.

Q. Do you regard him a man of high character?

A. I regard him as a friend.

Q. I say, do you regard him as a man of high character?

A. As far as I know, yes.

Q. You would accept his word without any question?

A. No.

Q. Why?

A. Well, it is according to what he is talking about.

Q. Suppose he is talking about you.

A. Oh, I don't know. It is according to what he is saying about me.

Q. In this telephone call you had with Laburnum on July 14, you said nothing at all that you were going in there and take the work over by threats or violence?

A. I didn't say anything to him on the 14th.

Q. You have testified that you called Laburnum in Richmond on July 14, 1949, haven't you?

Mr. Mullen: No, sir, he has not.

The Witness: No, sir.

By Mr. Robertson:

Q. July 13th?

A. That is right.

page 1593 } Q. Whoever you talked with, you said nothing about you all were moving in and taking the job over?

A. No, sir.

William Orbin Hart.

Q. This meeting you had on July 31 at Carver is also the same place known as Tiptop, isn't it?

A. No; Carver.

Q. How far apart are Carver and Tiptop?

A. They might be a mile or two, something like that.

Q. On July 26, you were with the group that went to the schoolhouse?

A. Yes, sir.

Q. And there was no rough stuff there at that time?

A. No, sir.

Q. And no profanity?

A. No, sir.

Q. Nothing at all?

A. No, sir.

Q. You went with the group from the schoolhouse to the tipple, didn't you?

A. Yes, sir.

Q. You went into the schoolhouse at the tipple, didn't you?

A. State your question.

Q. You went into the toolhouse at the tipple?
page 1594 } A. Yes, sir.

Q. When you made the statement there and Arnett said, "If you say that, you are a damned liar," you thought he was joking?

A. Oh, no. He just didn't understand what I was referring to.

Q. I say, when he said that, you didn't think it was fighting words or any occasion to get alarmed?

A. Not for a representative of labor, it isn't.

Q. And not out in a toolhouse in Breathitt County, Kentucky?

A. That is right. It was in the toolhouse, but those are not fighting words for a representative.

Q. When Bert Preston said to you, "If you don't have a picket, we will sure as hell work," you weren't at all upset over that statement?

A. No, sir.

Q. And at no time while you were in the toolhouse were there any threats?

A. No, sir.

Q. Or any violence?

A. No, sir.

Q. And at no time on the job site at the tipple were there any threats or violence, so far as you know?

A. No, sir.

William Orbin Hart.

page 1595 } Q. Whatever picketing was done there was done in a peaceful way?

A. Absolutely.

Q. Nobody threatened anybody else?

A. As far as I know, no.

Q. Why didn't you talk to Delinger when you went down there to the job site near the tipple on July 26?

A. I didn't have any business with Delinger.

Q. You knew he was the superintendent in charge of the work, didn't you?

A. No, sir. I don't even know him. I wouldn't know him today if I saw him.

Q. Did you know who was the superintendent in charge of the work?

A. No, sir.

Q. Did you try to find out?

A. No, sir.

Q. Why?

A. I was there to pull a strike. I had already contacted top management. I don't contact the lower brackets.

Q. You were there to run those men off the job, too, weren't you?

A. No, sir.

Q. When you met Bryan on the afternoon of the 26th down near the railroad crossing, which you have testified about—do you recall that?

page 1596 } A. Yes.

Q. Did you say to Bryan, "I will bet you \$500. you will never be able to finish this job out here unless you use United Construction Workers labor"?

A. No, sir.

Q. Did you say to Bryan, "Nobody yet has ever been able to buck John L. Lewis, and you can't do it, either"?

A. No.

Q. Did you say to him, "We have run other people off the job, and they didn't complain, so there is no reason why you should complain"?

A. No, sir.

Q. You said something about your having organized the job of the Corbett Construction, something at Wheelwright, Kentucky.

A. Who?

A. Beckett Construction Company at Wheelwright, Kentucky.

A. Yes.

William Orbin Hart.

Q. Do you know a man named Nelson Baldrige who was doing the painting out there on that job?

A. Yes, sir. Not on that job, no.

Q. On a job at Wheelwright, Kentucky?

A. Yes, sir.

Q. What job was it?

page 1597 } A. Painting the houses.

Q. What houses?

A. Camp houses.

Q. For whom?

A. Inland Steel Corporation.

Q. And you ran him off the job, didn't you?

A. No, sir.

Q. You met him out there with 200 or 300 men and told him to get the hell out of there, you would upset the truck and run them out of there, didn't you?

A. I did not.

Q. What were the circumstances under which you met Nelson Baldrige and a group of men there on the road going into Wheelwright, Kentucky, and turned them back and ran them out?

A. I never even spoke—

Colonel Harris: Wait just a minute, Mr. Hart.

We object to that as immaterial and outside the issues of this case, and it is a transaction *inter alios actio*, a transaction with third persons not involved.

Mr. Robertson: The Court has already ruled here repeatedly that that is admissible to show the pattern of the scheme they have followed to run anybody out of Eastern Kentucky that had the temerity to buck John L. Lewis. It is for that purpose, Your Honor.

page 1598 } Colonel Harris: As I recall, he misquoted

Mr. Bryan. Mr. Bryan didn't say John L. Lewis. He said United Mine Workers.

Mr. Robertson: All right. I stand corrected.

Colonel Harris: And the fact that Your Honor has ruled on numerous occasions doesn't end the matter, and we have to keep objecting when he keeps asking the questions.

The Court: The Court understands that, Colonel Harris.

The objection is overruled.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. What did you say to Nelson Baldrige when you ran him out, if you recall?

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Colonel Harris: We renew our objection, if the Court pleases, and reserve an exception.

By Mr. Robertson:

Q. What did you say to Nelson Baldridge when you ran him out, if you ran him out?

Colonel Harris: We renew our objection.

By Mr. Robertson:

Q. What did you say to Nelson Baldridge when you ran him out, if you ran him out?

Colonel Harris: We repeat our objection.

The Court: The objection is overruled.

page 1599 } Colonel Harris: We reserve an exception.

The Court: Now, go ahead and answer the question.

The Witness: I never even spoke to Nelson Baldridge that day.

By Mr. Robertson:

Q. Do you know him?

A. No.

Q. Did you run him out of there?

Colonel Harris: We object to that on the same grounds assigned, and we reserve an exception.

By Mr. Robertson:

Q. Answer the question.

A. No, sir, I didn't.

Q. What are the circumstances under which he left, if you know?

Colonel Harris: The same objection.

The Court: Same ruling.

Colonel Harris: Exception.

By Mr. Robertson:

Q. Answer the question.

The Witness: Repeat the question.

(The pending question was read by the reporter.)

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The Witness: That particular day, I am not familiar with Mr. Baldridge that day.

page 1600 } By Mr. Robertson:

Q. Are you familiar with any of the circumstances under which he quit work over there at Wheelwright?

Colonel Harris: Same objection.

The Court: Same ruling.

Colonel Harris: We reserve an exception.

The Witness: The only thing I know about it there is that he came in the next day or sometime later, and we negotiated a contract, but this particular day I never even spoke to Mr. Baldridge.

By Mr. Robertson:

Q. Do you deny that you and your men ran him out of there?

Colonel Harris: Same objection.

The Court: Same ruling.

Colonel Harris: Exception.

The Witness: Sure; me and my men, sure, I deny it, that me and my men, absolutely.

By Mr. Robertson:

Q. Who ran him out, if you know?

A. I don't know who did what.

Q. When you were working in Breathitt County, Kentucky, you had occasion frequently to go to David Hunter's office in Pikeville, didn't you?

A. He was my boss. I taken his orders.

page 1601 } Q. I said, you had occasion frequently to go to his office in Pikeville, didn't you?

A. Yes, sir.

Q. His office is on the second floor of the Seward Building?

A. Yes, sir.

Q. And Tom Raney's office is on the second floor of the Seward Building, isn't it?

A. Yes, sir.

Q. I call your attention to Defendants' Exhibit 10, which is the application blank signed by Green Stacy for membership in District 50, United Mine Workers of America, and ask you to look at it. (Exhibit handed to witness.)

How does it happen that it is not dated?

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A. I don't know why he didn't date it.

Q. Why didn't you date it?

A. I didn't have any business putting any date on another man's signature.

Q. So you don't know when it was signed, do you?

A. The 8th, there were four men signed, and Green Stacy was one of those four. Whether this is the one, I don't know.

Q. Then you don't know whether he signed it or not on the 8th?

A. I know he signed one with me on the 8th, page 1602 } but whether it was this one or not—

Q. How do you know it, if it is not dated?

A. Because I signed it.

Q. Because what?

A. Because I was the one that he signed with.

Q. Why didn't you date it or make him date it?

A. I didn't ask him to date it, and it is not my business to date them.

Q. And it is not possible that that could have been signed since the 26th of July, 1949, is it?

A. It is impossible.

Q. I call your attention to Defendants' Exhibit 11, which is an application for membership in District 50, United Mine Workers of America, signed by Matt Miller, and ask you to look at that. (Exhibit handed to witness.)

Why isn't that dated?

A. The same reason that the other one wasn't.

Q. It is not possible that that could have been signed after the 26th of July, 1949, is it?

A. After July 26?

Q. Yes.

A. No, it wasn't signed after that.

Q. How do you know?

A. Because those cards we kept in our office in the custody of our own office.

page 1603 } Q. Now I call your attention to Defendants'

Exhibit 12, which is an application for membership in District 50 signed by Lee Bach, and ask you to look at that. (Exhibit handed to witness.)

Why isn't that dated?

A. The same reason the others are not.

Q. And that is what?

A. Because I don't have any business putting anything on those cards after they are once signed by the employee.

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Q. But you procured the signatures, didn't you?

A. Sure, I procured them.

Q. And you procured the Social Security numbers where they are on them?

A. Not on this one.

Q. The ones that they are on it?

A. No, sir, we never put the Social Security number on them, unless they do themselves.

Q. It is not possible that that could have been signed after July 26, 1949?

A. No.

Q. Now I call your attention to Defendants' Exhibit 13, which is an application for membership in the United Construction Workers, Affiliated with the United Mine Workers of America, signed by Jerry Barnett, and ask you why that is not dated? (Exhibit handed to the witness.)

page 1604 } A. Because I don't have any business putting any dates on them.

Q. Everything you said about the others applies to that one?

A. That is right.

Q. Why did you sign that for United Construction Workers instead of District 50?

A. Because we had the cards mixed. We just put them all in one, the same as on the others.

Q. What is the criterion that makes you sign some people in District 50 and some in United Construction Workers?

A. One is an affiliated union, and the other is the District.

Q. That is the only explanation you have to offer?

A. That is all I have to offer.

Q. Now, I call your attention to Defendants' Exhibits 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28, which you testified about this morning and I ask you if any of them are dated?

A. (Examining documents.) Only one, Exhibit 24, has "7-24," but not the year after it.

Q. How many of those did you take, and which ones were they?

A. Sir?

Q. Which ones of those did you procure?
page 1605 } A. I didn't procure any of them. The boys were signing up several of the boys out on the grounds where I was at.

Q. So you don't know what date they were signed?

A. Yes, those particular ones were signed on the 26th, be-

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cause those are the only two days we were out there signing them up.

Q. These were signed on the 26th?

A. The 26th; and the other group here, these four men, were signed on the 8th.

page 1606 } Q. When you met Bryan at the road fork on the afternoon of July 26 he told you he wasn't going to take your treatment lying down, didn't he?

A. I don't know. No, I don't think so.

Q. He told you he was going to hold you and your unions responsible for your actions, didn't he?

A. No, sir; not then.

Q. He gave you to understand that there was liable to be a lawsuit because of what you had done there that day, didn't he?

A. No. I don't remember any lawsuit being mentioned.

Q. Those men that you signed up for were going into Local Union 778-A, weren't they?

A. That is right, until they were completely organized and then they would be given a charter of their own.

Q. That was the union that you used to put them in until you got a sufficient number to put them in a union of their own?

A. That was for small groups. They would go into that local union and then a charter would be secured for them and they would have their own local union.

Q. All the people that have signed all the cards that we have been talking about there were going into 778-A?

A. That is right.

Q. You were required to make daily reports, page 1607 } weren't you?

A. Yes.

Q. Who did you make them to?

A. Mr. Hunter in Washington.

Q. You made them in duplicate, didn't you?

A. Yes, sir.

Q. You would send the original where?

A. To Washington.

Q. To whom?

A. To Mr. A. D. Lewis.

Q. What is his title?

A. Chairman of the Organizing Committee and Director of the UCW.

Q. A copy would go to David Hunter in Pikeville?

A. Yes, sir.

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Q. What is his title?

A. Director—Who, Mr. Hunter?

Q. Yes.

A. He was regional director at that time of Region 58.

Q. When did you leave Breathitt County to go to work in Clarksburg, West Virginia?

A. May 15, 1950. That is when I was released from Region 58.

Q. I call your attention to the fact, which is in evidence here, that all your reports covering this time from page 1608 } July 25 through August 2 of these activities have disappeared. What about that?

A. I only keep my reports six months and destroy them.

Q. Your answer then is that all your reports about these occurrences in Breathitt County for the week beginning July 25, 1949, have been destroyed by you?

A. My records, yes.

Q. Your file copy?

A. That is right.

Q. What is the custom, if you know, about keeping them in A. D. Lewis' office in Washington?

A. I don't know a thing about that.

Q. What is the custom of David Hunter about keeping them in Pikeville?

A. I don't know anything about that.

Q. You don't know anything about that?

A. No, sir.

Q. You have no explanation to offer of why your file copies have gone and the copies from A. D. Lewis and from David Hunter also have disappeared?

A. I have explained why mine are gone.

Q. Why?

A. Because it gets to bundlesome to carry around and not to destroy them every six months. I don't have any use for them.

Q. Now I am going to call your attention to page 1609 } the answer of District 50, United Mine Workers of America, to interrogatories, Exhibit 4-8, which is the report of David Hunter to A. D. Lewis, Chairman of the Organizing Committee, District 50, UMWA and UCW, United Mine Workers, Washington 5, D. C., on Saturday, March 18, 1950, which reads as follows—

Mr. Mullen: If Your Honor please, it is necessary for us to renew our objection to any partial use of the interroga-

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tories for the reasons that we have been into very thoroughly and it is necessary of course to maintain our position and we now object to that.

The Court: The objection is overruled.

Mr. Mullen: An exception noted.

By Mr. Robertson:

Q. When Mr. David Hunter was reporting to A. D. Lewis in Washington for Saturday, March 18, 1950, he said this:

"Checking the four construction jobs we have under contract and also the road into Breathitt County, Kentucky, which Representative Hart informs me was impassable, I found the road in fair condition and had no difficulty in getting through. I have reasons to believe Representative Hart has lied on several occasions. Therefore I wanted to know definitely if the road was passable or not. At times his actions show he resents taking orders, and in order not to carry them out will make some excuse, such as: the roads
page 1610 } are impassable. I have requested Representative Hart to be in this office Wednesday, 10 a. m.
March 22."

What have you got to say to that?

A. Let me read that, will you, please?

(Document handed to the witness.)

The Witness: Well, I am sorry that Mr. Hunter made a report of that kind, for we were good friends, and if he has made a report of that kind it is unfortunate.

Mr. Robertson: Stand aside.

Mr. Mullen: Is that all you have?

Mr. Robertson: Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Mullen:

Q. Mr. Hart, what was the occasion that gave rise to that report?

A. That occasion is the time that I went into Breathitt County or started in to Breathitt County, and I had bought a new automobile, a new Buick, 1950 model. I bought it in December. The roads were bad, and I didn't undertake to take this car over this bad road. I hired a jeep. Mr. Jackson

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went with me that particular day and drove the jeep. The roads were very bad. I presented a bill to Mr. Hunter of \$7.00. He refused to pay it because he didn't order me to get the jeep. Therefore, it was worth \$7.00 to me not to drive a new automobile over that road.

page 1611 } Q. Did Mr. Hunter drive over it the same day or on a later day?

A. I learned—I don't know when he went over the road in particular, but he had some special larger tires for his car than were required, and he probably could get over rougher road than I could with my car.

Q. He had special treads and all to get over those roads?

A. That is right. In other words, they were higher off the ground, brought his car up higher.

Q. That report was made as of March 17. What is the general state of the roads at that time of year?

A. One day they are impassable and the next day they are passable because they scrape it. When they scrape the road you could get over it that particular day, but if they let it go one day and there is rain, you couldn't get over it at all with a car. A jeep can get over it.

Q. This report was a result of the argument you had with him about the passability of the road and about not using your new car on it?

A. It wasn't an argument. We didn't argue about it. He just didn't want to pay it, and I said "O. k., it is worth \$7.00 to me not to take my car over such a road."

Q. Then he called you in on the 22nd. Did he suggest that you be discharged or anything on that date?

page 1612 } A. I was never called in on the 22nd.

Q. In other words, there was nothing further done?

A. Nothing further was ever done about it.

Q. You remained there, you say, until May 15?

A. Yes, sir; and that is when I met Mr. Bryan, in Mr. Hunter's office, that particular day, on the 15th.

Q. You remained, notwithstanding that report, in the employ of the United Construction Workers or not?

Mr. Robertson: Don't you think you the leading him just a tiny little bit?

The Witness: I was to be transferred, and Mr. Hunter gave me a good recommendation when I left on May 15. He told me when I left there that I was being transferred to Clarksburg, West Virginia, because of my long standing with

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the organization and ability to negotiate contracts, and the director in Region 22 needed some help.

By Mr. Mullen:

Q. Mr. Hart, you are employed by whom?

A. District 50, United Mine Workers.

Q. And are you assigned to work for anybody else besides District 50?

A. Yes, sir; UCW, Local unions, to service them and negotiate contracts.

Q. You are a member of District 50, employed by District 50, but are assigned to do some work for United page 1613 } Construction Workers?

A. Yes, sir.

Q. At Hopewell was Mr. Hunter under you or over you?

A. Mr. Hunter worked under my supervision. I was assistant director in the Richmond area, and Mr. Hunter was put in my place at Hopewell and I came to the Richmond office to supervise the work at Hopewell.

Mr. Mullen: You may stand aside.

Mr. Robertson: Wait a minute.

RE-CROSS EXAMINATION.

By Mr. Robertson:

Q. Have you ever run anybody off any job anywhere at any time?

Colonel Harris: We object to that on all the grounds before assigned, on the additional ground that this is far too remote and too indefinite.

The Court: For what period of time, Mr. Robertson?

By Mr. Robertson:

Q. In the year 1949 did you ever run anybody off any job in eastern Kentucky?

Colonel Harris: The same objection.

The Court: I overrule the objection.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. Answer the question.

page 1614 } A. No, I never did run anybody off. We struck some jobs.

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Q. You closed them down, didn't you?

A. The boys come out on strike and the fellows would not cross the picket line.

Q. I say you closed them down, didn't you?

A. I say the boys came out on strike and the boys wouldn't go across the picket line, the A. F. of L. men wouldn't cross the picket line.

Q. I say the work stopped, didn't it?

A. As the result of a strike.

Mr. Robertson: No further questions.

The Court: Any further questions, gentlemen?

Stand aside, Mr. Hart.

(Witness excused.)

Colonel Harris: Mr. Harvey J. Robinson.

Whereupon,

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a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Colonel Harris:

Q. Are you Mr. Harvey J. Robinson?

A. Yes, sir.

Q. How old are you, Mr. Robinson?

page 1615 } A. Fifty.

Q. Where were you born?

A. Scranton, Pennsylvania.

Q. The work that you now do is for whom?

A. The United Construction Workers.

Q. How long have you been an employee of the United Construction Workers?

A. Since February 18, 1949.

Q. Of what region?

A. Region 58.

Q. Is Pikeville or Breathitt County, Kentucky, either one in that region?

A. Breathitt County is.

Q. Did you ever go over to Evanston, Kentucky, under di-

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rections of either Mr. Hart or Mr. Hunter, to the job site of the Laburnum Construction Corporation?

A. I went over there at the direction of Mr. Hunter.

Q. When was it that you went over to the job site?

A. My first visit over there was on July 8.

Q. Did you have any discussion with anybody on that occasion as to who you wanted to sign up?

A. Representative Hart and I both went in together.

The Court: Talk a little louder, Mr. Robinson, and turn toward the jury.

The Witness: Representative Hart and myself went in on that particular date and contacted the workers at lunch time. We found that there were some A. F. of L. carpenters who did belong to a union, but the laborers did not belong to a union, and the carpenters informed us that the laborers would like to become a member of the union in order that they might be taken care of so far as wages and other conditions of work were concerned. So we contacted some of the laborers and as well as I can remember, we signed up four that particular day.

The Court: Mr. Robinson, face the jury and listen to Colonel Harris' question when he speaks, but you speak to the jury.

By Colonel Harris:

Q. When was the next time that you were over to the job site of the Laburnum Construction Corporation?

A. July 27.

Q. Did you go with Hart that day?

A. No, sir. I went alone.

Q. What time did you get to the scene?

A. About 8:30 a. m.

Q. Where did you go on the 27th at 8:30 a. m.?

A. I went to the scene—in fact, I arrived at the scene about 8:30 a. m. at the Laburnum Construction office, where there was a group of men gathered, some sitting around, some standing around. I began talking to them, and
page 1617 } they were the laborers who were members of our organization, the United Construction Workers. I asked them if any one was working. They said "Yes, a few of the carpenters, A. F. of L. carpenters, had gone to work that morning." A short distance on the side of the road was another group of people who I was informed by the first

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group that I talked to that they were A. F. of L. carpenters.

Q. Did you talk to that group?

A. No, sir. During the conversation Mr. Bryan came up, introduced himself—in fact, he asked me who I was. I introduced myself and he introduced himself and used his title, President of the Laburnum Construction Company of Richmond, Virginia. The statement he made to me was, "What are you over here for?"

I said, "I am over here to bring about a settlement if I possibly can, if we can get together on it."

Mr. Bryan said, "These A. F. of L. carpenters are not going to join your union."

I told Mr. Bryan that we had no intention whatever of getting any of the A. F. of L. carpenters to join our union. If they had been told such, they had been told falsely.

Then the carpenters had gathered around at that time and Mr. Bryan and I were more or less in the middle, I might say, in so far as the two groups were concerned. Mr. Bryan said, "You do not have a legal picket line or a legal strike."

I said, "We are only hopeful, Mr. Bryan, that
page 1618 } these carpenters, A. F. of L. carpenters, will
honor our picket line."

He said, "Well, the carpenters are not going to honor your picket line." He said, "They held a meeting last night and I was present in that meeting, and they voted 100 per cent to cross your picket line and to go to work."

I told Mr. Bryan if that was the decision of the carpenters, they were at liberty at any time to cross the picket line and to go to work, that we were only hopeful that they would honor our picket line, but if they felt like crossing it they were at liberty to do so.

Mr. Bryan turned to the A. F. of L. carpenters and said, "All right, let's go to work."

Mr. Bryan started in the direction of the job, the tipple, and when he did the men followed him. I would say possibly two or three didn't follow him. He went on over in the direction of the job and disappeared at the tipple.

Mr. A. Meli, who I understand was the mechanical engineer, came out and said that he would like to see this thing settled. I told him I certainly would be glad if we could settle it, and I would do everything that I possibly could and I suggested to Mr. A. Meli to use what influence he might have with Mr. Bryan so that we could sit down and try to thrash the thing out. He said he would do what he could, but Mr. Bryan

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seemed to be a little worried and was running
page 1619 } around like a chicken with his head cut off, and if
he wasn't so bull-headed he would sit down and
try to thrash the thing out.

During this time Mr. Bryan came back and Mr. Meli went on back into the office. Mr. Bryan walked up to the group of laborers and said, "If you fellows want to work for 90 cents an hour, you can."

No one made any attempt to work. Mr. Bryan said, "If you want to work, you can go to work. The pay will be 90 cents an hour. If not, you are fired."

Then a man, a gentleman, came to the door and looked out, and Mr. Bryan said to him, "Make out their checks. They are all fired."

It appears to me that Mr. Bryan went on into the office at that time, and I remained outside of the office. This bookkeeper—I learned it was the bookkeeper whom Mr. Bryan was addressing with reference to making out the checks—came to the door and said, "Men, your checks are ready."

Well, the men started to accept the checks, and I advised the men to accept only the check that was due them that pay period. It was pretty close to payday at that time, as I understand it.

Then the fellows accepted the checks, just what was due them. That is the way I understood it at that time. And

Mr. Bryan went back into the office and was
page 1620 } talking with Mr. A. Meli. I walked in the office
and I just motioned to two or three of the fellows
of our group to come on in. I didn't know what might be said,
and they would be there possibly to hear whatever did take
place.

I understood Mr. Bryan to say, "No, we can't settle it."

I said, "Mr. Bryan, if you are referring to the strike, we can settle it."

He said, "How?"

I said, "Sit down. We can sit down and work together on this thing and see if it can be settled."

So the bookkeeper said, "You don't have any strike and you don't have any legal picket line. Our people are working, and your people quit."

That is the way he termed it.

I said, "They were fired."

He said, "They quit."

I said, "You gave them their checks."

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He said, "We did that through courtesy so they wouldn't have to come back."

I said okay.

"Mr. Bryan said they are fired and you say they quit. I declare them on strike, and I hope that is legal."

Mr. Bryan left the office then and went back in the direction of the tippie, and later came back. He was back about five minutes, I would judge, and I happened to glance
page 1621 } in the direction of the tippie and the men were all coming off the job. Why they came off, I don't know. I asked some of them, and none of them seemed to know.

That just about winds up the 27th.

Q. Let me ask you one or two questions more about this. Did you hear any threats made?

A. None.

Q. Was there any violence out there on the 27th?

A. None.

Q. Did you see any weapons of any kind?

A. None.

Q. Did you leave any pickets there when you left there?

A. On the 27th we left two men there with instructions that they might leave when they felt they should leave. If they wanted to stay on a while it was okay, and if they wanted to leave it was all right.

Q. Out in the country that way when you establish a picket line, do the men walk up and down the highway with a picket sign?

A. As the usual thing over in that part of the country, a group of men gather around who are on strike, and that would constitute a picket line. Sometimes they carry a sign. It is honored either way.

Q. Did you see Mr. Bryan any time after the 27th?

A. No. On the 27th I didn't see Mr. Bryan any more.

Q. Did you go back there another day?

page 1622 } A. I went back on the 28th.

Q. On this trip did you see Mr. Bryan?

A. I am not positive. It appears that I did see Mr. Bryan in and out of his office. I am not positive of that.

Q. You did not have any further conversation with him on that day?

A. No, sir.

Q. Did you in talking to the carpenters when you were out

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there tell them whether or not you wanted the carpenters to join up in the union or whether you wanted only a limited group?

A. On the 27th Mr. Bryan understood from our conversation that we were only interested in the laborers.

Q. How many laborers were fired out there on the 27th? How many did you see after the language you have used go in and get their pay?

A. I would say there was probably 10 or 12 men in that group. I didn't count them in particular as to how many received their checks, but I would say all who were employed, possibly 10 in that group, would have received their checks. I couldn't be exact on that.

Q. Did you notice whether or not there was a picket sign out there on the 27th or the 28th?

A. I noticed one on the 27th. As well as I can page 1623 } remember there was a sign there on the 27th when I arrived there.

Q. Did anybody take it down while you were there?

A. Not that I noticed.

Colonel Harris: That is all. You may cross-examine.

The Court: We will recess, gentlemen, for a few minutes.

(Brief recess.)

page 1624 } Colonel Harris: Judge, there is one other matter that I want to bring out by witness.

The Court: All right.

By Colonel Harris:

Q. You said a while ago that you were out there on the 28th.

A. Yes, sir.

Q. Did you have out there or at any other place on the 28th of July a meeting with any of the carpenters who belonged to the A. F. of L.?

A. Yes, sir.

Q. Was that out on the job site?

A. The meeting was held in a so-called bunk house—it had been used for that purpose—a short distance from the Laburnum Construction Company's office. It was up on the bank a little bit. I don't know just the exact distance, possibly 25 or 30 feet. We held a meeting with the A. F. of L. carpenters along with the laborers. Representative Hart and

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I were in that meeting. Representative Hart talked, addressed the group and told the A. F. of L. carpenters that we had heard that someone had told them that we were making an effort to bring them into our organization. If anyone had told them any such, it was untrue. We had no intention whatsoever of trying to get those people to become members of our organization. We were only hopeful that they
page 1625 } would honor our picket line. We were interested at that time in the laborers. The carpenters were well organized. We had worked with them before on other jobs. We didn't see any reason why we could not work with them on this one. The carpenters agreed in that meeting that they would not cross our picket line.

Q. That was on the 28th of July, 1949?

A. Yes, sir.

Colonel Harris: You may cross-examine the witness.

CROSS EXAMINATION.

By Mr. Robertson:

Q. How old did you say you are, Mr. Robinson?

A. The 20th of October I was 50 years old.

Q. How much do you weigh?

A. I weigh 195, approximately.

Q. Where were you born in Pennsylvania?

A. Scranton, Pennsylvania.

Q. Is that in the coal mining fields of Pennsylvania?

A. Well, I was brought away from there when I was one year old, so I was told by my family.

Q. I didn't ask you that. I said, is Scranton in the coal mining field of Pennsylvania?

A. I don't know.

Q. Where were you born and raised after you left Scranton?

A. Richmond, Virginia.

page 1626 } Q. Do you live here now?

A. No, sir.

Q. Where do you live now?

A. Paintsville, Kentucky.

Q. How long have you been living there?

A. It will be two years the 16th of this month.

Q. Are you a member of the United Construction Workers?

A. I am a member of the United Construction Workers, yes, sir.

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Q. Are you a member of District 50, United Mine Workers of America?

A. No, sir.

Q. Are you a member of the United Mine Workers of America?

A. No, sir.

Q. Who is your present boss?

A. My present boss is our Director of Region 59, James Dixon.

Q. Who was your boss in the month of July, 1949?

A. David Hunter.

Q. By virtue of the fact that he was the boss, you went frequently to his office in Pikeville, didn't you?

A. At that time that was my territory.

Q. I say, since he was your boss, you went frequently to his office in Pikeville, did you not?
page 1627 } A. I say at that time he was my boss, of course, but that was my territory.

The Court: Can you answer the question?

The Witness: Maybe I don't understand it.

The Court: Repeat the question.

By Mr. Robertson:

Q. I say, due to the fact that Mr. David Hunter was your boss at that time, did not you have frequent occasion to go to his office in Pikeville, Kentucky?

A. Not necessarily because he was my boss.

Q. Did you go frequently to his office?

A. I went occasionally.

Q. His office as Regional Director of Region 59, United Construction Workers, was on the second floor of the Seward Building, wasn't it?

A. At one time it was on the third floor.

Q. Then by July he had moved down to the second floor, hadn't he?

A. I don't remember. No, I don't think he had moved down in July.

Q. Do you call him by his first name, and he call you by your first name?

A. Well, as the usual thing.

Q. Do you know Tom Raney?

A. Yes, sir.

page 1628 } Q. How long have you known him?

A. Since I have been over in Kentucky.

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Q. Do you and he call each other by your first names?

A. Occasionally, usually.

Q. Coming back to David Hunter, his office as Director or Acting Director of Region 58 of the UCW was in the Seward Building in Pikeville, was it not?

A. Yes, it was in the Seward Building, Soward Building.

Q. And his office as Director of Region 58 of District 50 was also in the Soward Building, wasn't it?

A. He had jurisdiction of District 50.

Q. I say, he just maintained the one office there, didn't he?

A. That is right.

Q. To do both jobs.

A. Yes, sir.

Q. Tom Raney also had his office in that building didn't he?

A. Yes, sir.

Q. Did you work over in Hopewell before you went to Breathitt County?

A. I worked at the Hercules Powder Company.

Q. Did you make daily reports on what you did in July, 1949?

A. Occasionally.

page 1629 } Q. Didn't you make them right straight along?

A. Not straight along.

Q. I say, wasn't it your duty to make a daily report to David Hunter?

A. It was our duty, yes.

Q. Did you do it?

A. Not always.

Q. Have you got any of the reports that cover the week commencing July 25, 1949?

A. No, sir.

Q. What became of them?

A. We didn't have to keep those reports. When we made one, we didn't have any copy. Of course we had a book sometimes that we carried our things in that we had done.

Q. I say, what is the reason that all your reports for the week beginning July 25, 1949, have disappeared?

A. I wouldn't say only those have disappeared; the others as well, if you term it that.

Q. Did you make your report just to David Hunter or to anyone else?

A. I made my report to David Hunter and to Washington when I made one.

Q. And you made them in duplicate, didn't you?

Harvey J. Robinson.

Yes, sir.

page 1630 } Q. You made them on a typewriter, didn't you?
A. Not always.
Q. Generally?

A. Usually.

Q. And kept a carbon for yourself?

A. Sometimes.

Q. Anyway, they are all gone.

A. They are gone. I don't know where they are. We weren't required to keep a copy.

Q. When you were at the job site, you were working for whom? Who paid you?

A. United Construction Workers.

Q. When you were out there at the job site on Wednesday, July 27, you were representing Green Trusty, weren't you?

A. Representing who?

Q. Green Trusty.

A. I don't know any Green Trusty.

Q. You were representing all the people that had signed up.

A. I was representing the United Construction Workers.

Q. I show you Defendant's Exhibits 26, 27, 28, and 15, and ask you if you were representing any of those and, if so, which ones. (Documents handed to witness.)

A. I think I stated before that the people that I signed up, I signed them up on the 8th of July.

Q. I asked you if you were representing any of
page 1631 } those that you have in your hand.

A. Any person who has signed one of these I would represent.

Q. All right, why were you representing people that were trying to sign up with District 50?

A. Because we are assigned to District 50 by our Director, if and when necessary.

Q. So you were working both for United Construction Workers and for District 50.

A. Well, I am on the payroll of the United Construction Workers. Our Director can assign us to work under District 50 as well as United Construction Workers.

Q. At that time you were working both for United Construction Workers and District 50?

A. I was representing anyone who was signed on one of these applications.

Q. Those ones that I showed you are all signed on the applications of District 50, aren't they? I ask you to look at them and see.

Harvey J. Robinson.

Yes, sir.

Mr. Robertson: The witness has just referred to Defendant's *Exhibit* 15, 26, 27, and 28.

By Mr. Robertson:

Q. When you were out at the job site on Wednesday, July 27, you didn't see any rough stuff there, did you?
page 1632 } A. No, sir.

Q. There was nothing to get scared about?

A. Not that I could see.

Q. You weren't scared?

A. No, sir.

Q. You have not at any time been scared out on that job site, have you?

A. I didn't have anything to be scared of.

Q. Either before or since then?

A. That is right.

Q. You didn't hear any threats?

A. None.

Q. Did you say they were actually walking the picket there on the morning of July 27?

A. They were congregated; there was a group congregated, and as well as I can remember, there were two men walking there, too.

Q. They couldn't possibly have been the spotters sitting down there on the creek near the tipple, could they?

A. The men that I am referring to were not near the tipple.

Q. But there weren't any threats there of any kind?

A. No, sir.

Q. And no cussing that you know of out of the ordinary?

A. No.

page 1633 } Q. I believe you said it was customary out in that country for men to congregate in the way that you have described, wasn't it?

A. Yes.

Q. It is customary for them to carry guns, too, isn't it?

A. No, sir.

Q. It is not customary to carry a gun in Breathitt County?

A. Not that I know of.

Q. You have never seen anybody carry a gun there?

A. Officers of the law?

Q. No. I mean just people like you and me.

A. No, sir.

Q. Where are you working now?

Harvey J. Robinson.

A. United Construction Workers.

Q. Did you hear any threats out there on July 28?

A. No, sir.

Q. Did you see any rough stuff?

Q. Your boss was who?

A. Would you repeat that?

Q. Who was your boss at that time?

A. David Hunter.

Q. Now, Mr. Robinson, I am referring to the page 1634 } answers of United Construction Workers, affiliated with the United Mine Workers of America, to summons of the Plaintiff to answer interrogatories; the report of David Hunter to A. D. Lewis, Chairman of the Organizing Committee, District 50, United Mine Workers of America and United Construction Workers, for the week ended September 9, 1950, and under the heading "Organizational" he has this to say regarding the Paintsville, Kentucky, area.

Mr. Mullen: We object, Your Honor.

The Court The objection is overruled.

Mr. Mullen: For the reasons previously stated. We reserve an exception.

By Mr. Robertson:

Q. "Representative Robinson has been unable to make any progress in organizing the Paintsville area. Inasmuch as he has been run off a couple of jobs, I believe he has lost his nerve and is afraid to work alone. Therefore, I have temporarily assigned him to work with Representative Gilbert in the Williamson area. I am hoping that a few weeks work with other representatives will help him regain his lost confidence. Otherwise, I am of the opinion Representative Robinson will have to be replaced. This matter has been discussed with Representative Robinson, and I certainly hope he can overcome the fear he has developed.

"Fraternally yours, David Hunter, Acting Director, Region 58."

page 1635 } What have you got to say about that fear?

A. Well, he has a right to make a report on

Harvey J. Robinson.

his men. There is no question on that. So far as the fear, I have none.

Mr. Robertson: Stand aside.

Colonel Harris: I want to ask you a question.

RE-DIRECT EXAMINATION.

By Colonel Harris:

Q. When you stated a while ago that you made reports and sent one to Washington, you didn't state where you sent it in Washington. Would you tell us that?

A. I sent it to Mr. A. D. Lewis, the Director of the Organizing Committee.

Q. Is he the Chairman of the Organizing Committee of District 50?

A. Yes, sir.

Q. Are you able to look back in your mind and recall any job that you were run off of out there in eastern Kentucky?

A. If I was run off any job, I don't know anything about it. I am still working in that territory.

Colonel Harris: That is all.

RE-CROSS EXAMINATION.

By Mr. Robertson:

Q. Maybe I can help your memory a little. Did you have anything to do with this job out there in Wheel-
page 1636 } wright, Kentucky, when Nelson Baldrige was
run off?

A. No, sir.

Q. You didn't either run other people off or get run off yourself at any time out at Wheelwright?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

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GRANT DAVIS,
called as a witness in behalf of the Defendants, having been
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Colonel Harris:

Q. How old are you, Mr. Davis?

A. Fifty-one. I will be fifty-one my birthday.

Q. Where were you born?

A. I was born in Dawson County.

.

page 1637 } The Witness: Very well. I was born in Dawson County, Kentucky.

By Colonel Harris:

Q. Have you lived in Kentucky practically all your life?

A. All my life.

Q. What business do you follow now?

A. Mining.

Q. Coal mining?

A. Yes, sir.

Q. Are you a member now of the United Mine Workers of America, as a coal miner?

A. Yes, sir.

Q. You were mining coal during July, 1949?

A. No, sir.

Q. What work were you doing then?

A. Carpentering.

Q. Were you carpentering out in Kentucky?

A. Yes, sir.

Q. On what job were you carpentering?

A. On the Laburnum job in Breathitt County.

Q. When did you go to work for the Laburnum Company out there?

A. December 6, 1948.

Q. When did you quit work out there?

A. I quit work on July 26, 1949.

page 1638 } Q. While you were working for Laburnum Construction Company were you a member of any union?

A. Yes, sir.

Q. What union did you belong to then?

Grant Davis.

A. I belonged to the A. F. of L. carpenters union; also the United Mine Workers of America.

Q. How many of them out there were members of both the A. F. of L. and the United Mine Workers?

A. I don't know. I couldn't answer that question.

Q. Did you know anybody else that belonged to both?

A. No.

Q. Did you take any active part in United Mine Workers union or did you merely keep your dues paid up?

A. I just kept my dues paid up. During what times I was working on that Laburnum job in Breathitt County I didn't attend any meeting of the United Mine Workers whatever.

Q. When you were with the A. F. of L., you were working there on July 26?

A. Yes, sir.

Q. Did you see Mr. Hart there then?

A. No, sir.

Q. Whereabouts were you working?

A. I was working on top of the hill, what they call up at the head house.

Q. What kind of work were you doing up there?

A. I was doing carpenter work.

page 1639 } Q. Did anybody come up there to talk to you all at the head house on top of the hill?

A. No, sir.

Q. Did you do a full day's work on July 26?

A. Yes, sir.

Q. Did the other carpenters who were working there on the head house do a full day's work?

A. Yes, sir.

Q. How many of the carpenters were there working up on the head house?

A. There were four of us.

Q. Did you have any carpenter helpers or common laborers up there working with you?

A. We had a couple of laborers with us.

Q. Did you go back any after July 26 to work?

A. Yes, sir.

Q. We will take it up in order, though. Did your union hold a meeting—

Mr. Robertson: Which one, just to keep it plain.

Colonel Harris: He has made it clear that he took no active part in the United Mine Workers.

Grant Davis.

Mr. Robertson: But he belonged to both of them.

Colonel Harris: Suppose he argues that to the jury.

Mr. Robertson: If Your Honor please, I am page 1640 } speaking seriously. I think if counsel is going to examine this witness, he is entitled to know which union he is talking about, in common sense. I think the man showed real good judgment, but I want to know which one he is talking about.

Colonel Harris: The witness is not in distress.

Mr. Robertson: I think counsel is in distress.

Colonel Harris: If you never get any more distressed than I am, you will be a very happy man the rest of your life.

Mr. Robertson: You look mighty unhappy to me.

Colonel Harris: That shows how little you know.

Mr. Robertson: That looks like a forced smile to me.

The Court: All right, gentlemen.

By Colonel Harris:

Q. What date was it that you attended a union meeting near July 26 in Paintsville union hall?

A. On the 27th day of July.

Q. Was that an A. F. of L. meeting?

A. Yes, sir.

Q. Was Mr. W. O. Hart, of the United Construction Workers, present at that meeting?

A. Yes, sir.

Q. Did he make any kind of speech or talk to you A. F. of L. carpenters?

page 1641 } A. Yes, sir, he sure did.

Q. Did he say who he wanted to sign up with the United Construction Workers in that meeting?

A. No, sir, he didn't.

Q. Did he tell them whether or not he wanted the A. F. of L. carpenters to sign up with the United Construction Workers?

A. No, sir. He said he didn't want the A. F. of L. carpenters union to sign up. He said he wasn't working A. F. of L. carpenter union jobs at all. He was only to organize the laborers.

Q. In that meeting did Mr. Hart make any threats that you heard?

A. No, sir.

Q. Were you in that meeting from the time the meeting was called until it adjourned?

A. Yes, sir.

Grant Davis.

Q. On the 27th did you go back to the Laburnum job site?

A. What?

Q. On the 27th of July did you go back to the Laburnum job site?

A. Yes, sir.

Q. What time of day did you go back?

A. We went back that morning at work time.

The Court: Are you gentlemen of the jury hearing him?
Mr. Davis, see if you can look toward me when
page 1642 } you answer the questions. The gentlemen of the
jury have difficulty hearing you.

The Witness: Yes, sir.

By Colonel Harris:

Q. Where did you go on the morning of the 27th when you went back at work time?

A. We were informed at Salyersville to go back to the bottom of the hill, what we call the foot of the hill, on the tipple on the 27th, in the morning, to our work, by our foreman.

Q. Who was your foreman?

A. Charlie Patrick.

Q. Did you carry out the orders of your foreman and go there to the foot of the hill on the morning of the 27th?

A. Yes, sir, I sure did.

Q. Tell us what happened when you got there on the morning of the 27th.

A. We went to the foot of the hill, and all of our carpenter force were kind of held up there at the foot of the hill, what we call the foot of the hill, which was the Laburnum pay office. That is where their pay office was. There was a little road which led down off the main highway going down to the tipple, and just below the forks of that road was a picket sign there, tacked up. We halted at that picket sign. We
page 1643 } didn't go through it because it was a peaceable
picket sign. There were only two pickets that I seed of at that picket line, but they had a picket sign tacked up on a post—a stake. It wasn't on a post; it was on a stake.

Mr. Bryan, over there (indicating), walked down and tore the picket sign down and brings it back up into the office. Then he asked us fellows if we would go on to work, and nobody didn't go on to work right at that time. So we kinda

Grant Davis.

halted there. I think maybe a few of them did go on and go to work.

He went us back to the top of the hill, to our job. We went back to the top of the hill and went to work. We worked something like maybe fifteen or twenty minutes, maybe a little longer than that. After we started to work we were called off our job, and Dave Miller was the man who called us off. He was running the hoisting engine at the top of the hill on the high line. He came out there and hollered to us and told us that they said for us to put our tools up and come to the foot of the hill again. Mr. Daniels, Mr. Harrison Daniels, asked him who said to come to the foot of the hill, and he said Cecil Delinger. That was Laburnum's superintendent. So we put our tools up and went to the foot of the hill, and when we got to the foot of the hill all of our carpenters were still just mixing and milling through one another there and wouldn't go to work.

page 1644 } By Colonel Harris:

Q. When Mr. Bryan tore down the picket sign did he use any violent language at that time?

A. Yes, he did, but I would rather not repeat what the man said.

Q. Your religion prevents you from repeating it?

A. I would rather not repeat that.

Q. I won't ask you to repeat it.

Did he do anything to show his feeling toward the picket sign after he threw it down?

A. He throwed it in the office. He stood on it and turned around and around a time or two and wanted to know if any of us fellows were going to work after he tore the picket sign up, took the picket sign down.

Q. In the A. F. of L. union, under the customary methods of procedure of a union, can outsiders stay and be present at a meeting?

A. No, sir; not as long as the meeting is in business order, they can't.

The Court: I didn't catch that answer.

The Witness: Not as long as the meeting is in business order.

The Court: Mr. Davis, see if you can talk just a little louder.

Grant Davis.

By Colonel Harris:

page 1645 } Q. While you carpenters were milling around
did you hear anybody say that they were afraid
of getting shot?

A. I heard some of the boys say that they said some of the
boys said they were afraid to go to work, said they were
afraid they might be picked off the tippie by rifles or a gun
or something. Some said they weren't afraid to go but they
wouldn't go through the picket lines because they felt like
they ought to stay out to sympathize with the other boys.

Q. Ought to stay what?

A. Yes, sir; to sympathize with the laborers.

Q. Did you at any time out there on that Laburnum job
hear anybody make any threats to shoot anybody?

A. No, sir.

Q. Did you hear them make any threats to beat anybody or
to kick anybody?

A. No, sir; I sure didn't.

Q. Did you see any disorderly conduct of any sort out
there?

A. No, sir.

Q. You didn't go back to work, did you, after that meeting
when you were milling around?

A. No, sir; not after the 27th day I wasn't back in there
any more. I don't know what happened after that.

page 1646 } Mr. Robertson: Wait a minute. Let him
finish.

Colonel Harris: I beg your pardon. Did I interrupt you?

The Witness: No. That is all I was going to say, just I
didn't go back any more. I don't know what happened after
that day.

By Colonel Harris:

Q. Were you afraid that you would get hurt if you went
back to work?

A. No, sir; I sure wasn't.

Q. What was the occasion that prompted you to stay away
after the 27th?

A. I felt like I ought to stay away to sympathize with the
other boys, the other union that was coming in there, until they
were recognized as a body of union men.

Colonel Harris: You may take him.

Grant Davis.

CROSS EXAMINATION.

By Mr. Robertson:

Q. How long have you been a member of the A. F. of L., Mr. Davis?

A. I joined the A. F. of L. on December 6, 1948.

Q. When did you go to work for Laburnum?

A. December 6, 1948.

Q. When did you join the United Mine Workers?

A. I joined the United Mine Workers in 1918.
page 1647 } Q. So you belonged to the United Mine
Workers before you did to the A. F. of L.?

A. That is right.

Q. Doesn't your obligation to the United Mine Workers convince you not to join the A. F. of L.?

A. No, sir.

Q. It does not?

A. No, sir.

Q. You were sort of playing both ends against the middle by belonging to them both out there, wasn't you?

A. No, sir.

Q. Did you keep your dues paid up in both of them?

A. I paid my dues in both of them, yes, sir.

Q. You knew nobody would bother you out on that job as long as you were a member of the United Construction Workers, didn't you?

A. No, sir; I didn't. I didn't have that intention whatever.

Q. Anyway, you were a member of the United Mine Workers.

A. Yes, sir.

Q. In good standing?

A. Yes, sir.

Q. Were your dues all paid up?

A. Yes, sir.

Q. Belonging to what local?
page 1648 } A. I belonged to 5834.

Q. Where is that?

A. At Thealka, Kentucky.

Q. How far is that from the job site in Breathitt County?

A. It is about 43 miles, I guess.

Q. Nobody ever bothered you at all?

A. No, sir.

Q. You said that you did hear some of these men say, what about getting shot?

Grant Davis.

A. How is that?

Q. You said something about some of the carpenters down there on the 27th were talking about they were scared to go back to work for fear they would get shot. Just what was it they said?

A. They said "We don't know who might be in these hills with rifles in there." No, we didn't know what was in them hills. We couldn't swear there was anybody in them hills. We didn't know there was anybody in them hills whatever, because I never had been over there. I didn't know what was in them hills, but still I wasn't afraid to go back to work because I wasn't afraid of anybody bothering me. I never had people treat me better in my life than I was treated in Breathitt County.

page 1649 } Q. Then what was eating on those fellows that kept on talking about somebody shooting them from the hills?

A. They were just natural cowards, that is all, brother, if you want me to tell you. That is what it was.

Q. They had not joined the United Mine Workers either, had they?

A. What?

Q. They had not joined the United Mine Workers, had they?

A. No, sir. Some of them couldn't get in there, I guess, if they wanted to.

Q. Did you take your obligation when you joined the A. F. of L.?

A. Yes, sir.

Q. Doesn't that commit you not to give any aid or comfort to a rival union like the United Mine Workers?

A. Yes, sir.

Q. Why did you koin up with the United Mine Workers?

A. I didn't join up with the United Mine Workers. I already belonged to the United Mine Workers.

Q. Well, did you belong to the United Mine Workers or United Construction Workers?

A. Huh?

Q. Did you belong to the United Mine Workers or United Construction Workers?

page 1650 } A. I belonged to the United Mine Workers of America.

Q. Well, did your obligation with them keep you from joining the A. F. of L.?

Grant Davis.

A. No, sir.

Q. You were free to join anything you wanted?

A. Yes, sir.

Mr. Robertson: I have no other questions.

RE-DIRECT EXAMINATION.

By Colonel Harris:

Q. Are you mining coal now or working around the mines now?

A. Yes, sir. I am working inside of the mine.

Q. What was the occasion that prompted you to keep your dues paid up in the United Mine Workers?

A. Well, sir, the reason I kept my dues paid up in the United Mine Workers, I didn't want to drop out because I knew this job over there wasn't going to last too awful long and I didn't want to leave my home to go to work in other places, so I kept my dues paid up in the United Mine Workers of America so I wouldn't have to pay an initiation fee again when I started back in to working in the coal mine. The reason I was over in Breathitt County on the job during the time I was working, our tippie burned down at the Northeast Coal Company and it throwed us all out of work for 18 long months. So I had to make a living for my family some way. That
page 1651 } is why I was in Breathitt County during the
time that I was in there when this trouble came
up.

So I kept my dues paid up in the United Mine Workers of America so I wouldn't have to pay that \$50 when I went back in the mines.

Colonel Harris: That is all.

RE-CROSS EXAMINATION.

By Mr. Robertson:

Q. You had to keep your dues up in the United Mine Workers if you were going to work there in eastern Kentucky, didn't you?

A. No, sir.

Mr. Robertson: All right.

The Court: Stand aside.

Harrison Daniels.

(Witness excused.)

The Court: You may adjourn Court until tomorrow morning at 10 o'clock.

(Whereupon, at 4:50 o'clock p. m., the Court recessed until 10:00 o'clock a. m. Wednesday, February 7, 1951.)

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page 1652 }

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Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on February 7, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for the Defendants.

Also Present: Robert N. Pollard, Jr.

page 1653 }

PROCEEDINGS.

(Roll call of the jury.)

The Court: Who is your next witness, Mr. Mullen?
Colonel Harris: Call Mr. Harrison Daniels.

Whereupon,

HARRISON DANIELS

called as a witness for Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Colonel Harris:

Q. What is your name, please, sir?

Harrison Daniels.

A. Harrison Daniels.

Q. Where do you live?

A. I live at Paintsville, Kentucky.

Q. Where were you born?

A. I was born in Lawrence County, Kentucky.

Q. How old are you, Mr. Daniels?

A. I was born in the year 1889.

Q. Have you ever worked for the Laburnum Construction Company?

A. I did, yes, sir.

Q. Where did you work for them?

A. In Breathitt County.

Q. Are you a member or were you a member then of the American Federation of Labor?

page 1654 } A. A. F. of L.?

Q. Yes.

A. Yes, sir.

Q. Which local union did you belong to, the one at Paintsville or the one at Salyersville?

A. Paintsville, 646.

Q. What time did you go to work on the Laburnum job for the Pond Creek Pocahontas Coal Company?

A. I started in on Monday after the November election in 1948.

Q. Do you know who was the first man that went to work on the job?

A. You mean—

Q. The Laburnum job.

A. The superintendent?

Q. No, of the carpenters. Were you among the first?

A. I was one of the first ones, yes, sir.

Q. Are you now a member of the United Mine Workers of America?

A. Yes, sir.

Q. How long have you been a member of the United Mine Workers of America?

A. I guess twelve years altogether.

Q. Are you still a member of the A. F. of L.?

A. No, sir; I am not.

page 1655 } Q. When did your membership with the A. F. of L. terminate, when did it end?

A. I believe—I wouldn't say for sure, but I believe it ended in October in 1949.

Q. Whereabout were you working on the Laburnum job on Tuesday, the 26th of July, 1949?

Harrison Daniels.

A. I was working on top of the hill at the head house.

Q. Did anybody come up to the head house that day and interfere or interrupt the work you were doing up there?

A. No, sir; they did not.

Q. Did you see them interrupt the work that any of the other men were doing up there?

A. No, sir; I did not.

Q. Do you remember what men were working up on the head house with you on the 26th of July?

A. I think I remember all of them. There was Monroe Sublett, Grant Davis, Albert Dotson, and Tony Wireman and Tony Miller.

Q. When did you first learn that the strikers from Allen-Codell and Codell Faulconer had been over to the Laburnum job that day?

A. I never heard nothing about it until after quitting time in the afternoon.

Q. That night, the night of the 26th, did you go to a meeting in Paintsville?

page 1656 } A. Yes, sir; I did.

Q. Where was that meeting?

A. It was held in the City Hall.

Q. Did you hear any speeches or conversations at that meeting?

A. Yes, sir; I did.

Q. Did you hear Mr. Bryan make any speech?

A. I did.

Q. Do you recall what he said at that time?

A. Mr. Bryan come in there and he got up and addressed the crowd, and he asked the boys all to go back the next day and go to work. He said, "I will put my overalls on," he said, "and go out on the job with you." He said, "I will lead the way."

Well, they all talked around there some time, and then they agreed, some, to go back in the next morning and go to work.

Q. Did you hear a man named Bert Preston say anything to Mr. Bryan on that occasion?

A. Yes, sir; I sure did.

Q. Had you known Bert Preston before that meeting?

A. Yes, sir; I sure did.

Q. How long had you known him?

A. Well, I have known Bert Preston I guess 10 or 15 years.

Q. When Mr. Bryan said he would lead them
page 1657 } across the picket line, what, if anything, did Bert Preston say to that?

Harrison Daniels.

A. Bert Preston said that he was not going to have anything to do with it because it was dangerous in there, to go across it, something similar to those words.

Q. Did he say anything about a picket line?

A. That he wouldn't cross the picket line.

Q. That he would not?

A. That is right, that he would not cross a picket line.

Q. Did you go back out there on the 27th?

A. I did.

Q. Whom did you ride with on that day?

A. I started in with a fellow by the name of Dave Miller and rode about half way and he had a breakdown and I got in with Charlie Patrick. That was the foreman I was working for.

Q. Did you ride from there in to the job site with Patrick?

A. I rode in to the office there, where the office was, with him.

Q. What did you find when you got to the office?

A. When we got there at the office, I seen Mr. Bryan walk down and take the picket sign down and bring it in to the office.

page 1658 } Q. Did you hear him make any speech on that occasion?

A. He was talking to them and trying to get them all to go back to work. Then later they all agreed to go to work, and the foreman started to leading the crowd and they went towards the tipple. Me and my crew that I worked with, we got something like half way between the tipple and the office, and someone hollered from back over from the office—I don't know who it was, and I couldn't recall—and said they wanted us fellows that worked on top of the hill to come back and go to our job. We turned and come back over and they said we want you fellows, the superintendent did, to go back on top of the hill to your job. So we turned and drove something like three miles, I guess, or more, back to the top of the hill, the way we had to go. We got up there and got our tools out, and then we had to drop down over the hill maybe a couple of hundred feet or something like that, up on the head house. We got up there and started work. I worked something like between 15 and maybe 20 minutes, and a fellow by the name of Dave Miller came out on a big wall built there and he hollered down and said, "Hey, you fellows, they want you all off the hill down to the bottom." I said "Who said so?" He said Delinger did. That was the superintendent. So we turned and went back down and got in our car and drove back

Harrison Daniels.

down. They were all met there at the office. They pondered around there some time trying to get settled, page 1659 } Bryan still trying to get them to go back to work. Then the men just decided they wouldn't cross that picket line and go to work. Then they decided they wouldn't do nothing. Then they went ahead on, just first one and another kept drifting out, until directly they were all gone.

Q. When Mr. Bryan pulled down the picket sign, were there any pickets anywhere near when that happened?

A. I wouldn't say there were any pickets. There were lots of fellows there. I talked with lots of those boys around there, there were plenty of them that didn't belong to our organization.

Q. Didn't belong to the A. F. of L.?

A. That is right, they didn't belong to the A. F. of L.

Q. When Mr. Bryan tore down the picket, did any of these men that were standing around there at that time threaten him or make any effort to injure him?

A. I never seen nobody do nothing like that.

Q. Did you hear any cursing or loud talking going on there?

A. I did not.

Q. Did you at any time hear anybody threaten to shoot anybody else?

A. No, sir; I did not.

page 1660 } Q. Do you know a man named Henry Starr?

A. I do.

Q. How long have you known Henry Starr?

A. I knowed him something like five year, I guess.

Q. Were you and he ever members of the same union?

A. Yes, sir, we was.

Q. Did you both hold jobs in the union?

A. Yes, sir.

Q. What was the job that you held?

A. I was Trustee of the union.

Q. What was Henry Starr?

A. He was the Treasurer.

Q. As Trustee, was it your duty to examine the books of the Treasurer?

A. That is right, every six months.

Q. Did you and Henry Starr have any argument about that?

A. I tried about two months or three, there, to get a settlement out of him, and I never could get none.

Harrison Daniels.

Q. Do you know Henry Starr's reputation for truth and veracity in the community where he lives?

A. Well, I know pretty well, yes, sir.

Q. Is that reputation good or bad?

A. It is not good in our country.

Q. Did you go to the meeting on the 28th at Paintsville?

A. No, sir, I didn't attend that meeting.

page 1661 } Q. Did you talk to Mr. Bryan any more?

A. Later, after that, yes, sir, I did.

Q. Was that after you had finished all your work at Laburnum?

A. No, sir. I went back after I talked to Mr. Bryan, and talked some more.

Q. Where was your conversation with Mr. Bryan?

A. It was in the Herald Hotel in Paintsville.

Q. Do you recall what day of the month that conversation was?

A. No, sir, I sure can't.

Q. What was said by Mr. Bryan and what was said by you at that hotel in Paintsville?

A. I went in there, and he was taking statements from all the boys who worked for him. I went in, and he asked me where I worked, and I told him where I was working. He wrote my name down, probably, I believe he did, on a slip of paper. He asked me a few questions.

"Well," he said, "You don't know anything that would do us any good or help us," something like that. He asked me, "Are you afraid to go back in there to work?" And I said, "No, sir. I am not afraid to go back in there to work." He asked me if I would go back in and work, and I told him I would.

page 1662 } Q. Did you?

A. Yes, sir, I did.

Q. Go ahead. I didn't mean to interrupt.

A. He told me to report on Monday morning to Salversville to a fellow by the name of Louis something. I don't know just exactly what his last name was, Belcher or Belter, or what.

Q. Veltry?

A. Veltry, something like that, yes, sir.

So Monday morning I went back there and reported to Louis there at the hotel. So I worked that week, helped crate up all the stuff that Laburnum had in there, stayed with them and crated up, loaded everything they had out into boxcars and railroad cars. I worked that week, and after we got

Harrison Daniels.

everything done we nailed boxcars. I drove the last nail that was drove on the job, and the first.

Q. When you went back to work on or about August 1st, were there any picket signs there then?

A. Yes, sir, there was a picket sign there.

Q. Did you see any men standing around then?

A. Yes, there were some men standing there.

Q. What happened to the picket sign that was there?

A. Louis went down and took it down and brought it in the office and laid it down there. It laid there all the time we worked until we got done, and it was still in there page 1663 } when we left.

Q. Did anybody at any time, from July 26 on up until August 1, ask you to join the United Construction Workers?

A. No, sir, they did not.

Colonel Harris: You may take the witness.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Daniels, you say you were doing carpentry work out on the job?

A. Yes, sir.

Q. When did you arrive in Richmond for this trial?

A. I came in last Saturday or Sunday.

Q. Did you come in here the 26th of January?

A. I came in last Sunday, whatever date it was.

Q. Last Sunday a week ago?

A. Yes, sir.

Q. Were you in town the Sunday that John L. Lewis was in town?

A. I never seen him.

Q. You never saw him?

A. No, sir, I did not.

Q. You belong to the United Mine Workers of America?

A. I do.

Q. You have belonged to them for how long?

A. Something near twelve year, I guess, ten or twelve.

Q. And you belong to the United Construction Workers? page 1664 }

A. No, sir.

Q. Do you belong to District 50 of the United Mine Workers?

Harrison Daniels.

A. No, sir. I belong to the United Mine Workers. That ain't District 50.

Q. Do you still belong to the American Federation of Labor?

A. No, sir, I do not.

Q. How long did you belong to that?

A. Well, let's see, now. I belonged to them something like four year.

Q. But you belonged to the United Mine Workers of America before you joined the A. F. of L.?

A. Yes, sir, I did.

Q. How long had you belonged to the United Mine Workers when you joined the A. F. of L.?

A. I didn't belong to the United Mine Workers at that time when I joined the A. F. of L. I had quit mining and hadn't mined none since 1946.

Q. Well, did you ever belong to both unions at the same time?

A. I did for a period of time, yes, sir.

Q. Did you join the A. F. of L. and then rejoin the United Mine Workers, or did you take up your membership 1665 } ship in the United Mine Workers and then rejoin the A. F. of L.?

A. No, sir, I didn't rejoin the A. F. of L. I didn't join the A. F. of L. but one time.

Q. That was after you had joined the United Mine Workers?

A. I had belonged to the United Mine Workers, yes, sir.

Q. When you joined the A. F. of L.?

A. I didn't belong to them at that time. I had dropped out. I hadn't worked in and around the mines since 1946.

Q. But you never belonged to both unions at the same time?

A. I did for a period of time, yes, sir.

Q. On Tuesday, July 26, you were working on top of the hill, up in the neighborhood of the headhouse?

A. Yes, sir.

Q. You put in a full day's work without any trouble?

A. I sure did, yes, sir.

Q. You went to the union meeting in Paintsville that night?

A. I went down to the City Hall, yes, sir, at a called meeting. It wasn't a regular meeting. It was a called meeting.

Q. You said that at that meeting some of the men said it was dangerous out there on the work and didn't want to go back. Just what did they say about that, as nearly as you can remember?

Harrison Daniels.

A. I told you they said it was dangerous and
page 1666 } wouldn't go back to work. They wouldn't go
over a picket line.

Q. It was dangerous to cross a picket line?

A. They didn't say it was dangerous to cross a picket line.
They just said they wouldn't cross it.

Q. But they said it was dangerous?

A. Yes, sir, they said it was dangerous.

Q. Did you hear Bert Preston saying anybody going back
out there ought to pack not less than a .38?

A. No, sir, I did not.

Q. Did you hear anybody say if they were going back out
there they ought to pack a gun?

A. No, sir, I did not.

Q. Did you hear Mr. Bryan say that they ought not to pack
a gun?

A. I never heard Mr. Bryan say nothing about it.

Q. You were there during the whole meeting?

A. I certainly was.

Q. When you went back out to the job site on July 27, in
the morning, which would be Wednesday, you say about how
many men were out there?

A. I didn't go back on Wednesday. Monday was the 26th,
wasn't it?

Q. Tuesday was the 26th. You didn't go back until the
following Monday?

A. I went back the next day after I worked the full day
on top of the hill.

page 1667 } Q. If you worked a full day on top of the hill
on the 26th, that was Tuesday?

A. That is right.

Q. And then you went to the union meeting at Paintsville
that night?

A. That is right.

Q. Then did you go back out to the job site the next morn-
ing?

A. Yes, sir, I did.

Q. When you got out there, how many people would you say
were out there?

A. You mean on the job?

Q. Yes.

A. I guess maybe there might have been 30, altogether, by-
standers and laborers and everything.

Q. Did you hear any talk that morning about anybody be-
ing scared?

Harrison Daniels.

A. No, sir, I never heard nothing said about it.

Q. You never heard anything about that at all?

A. No, sir, I did not.

Q. There was no reason for you to be scared, because you were a member of the United Mine Workers, weren't you?

A. No, sir, I didn't belong to them at that time.

Q. You belonged to the A. F. of L. at that time?

A. Yes, sir.

page 1668 } Q. You were not scared at all?

A. No, sir, I was not.

Q. When you went back to work to help Laburnum move out, you went back at 90 cents an hour, didn't you?

A. No, sir, I went back at my same scale that I was getting.

Q. You were getting carpenter's pay. I beg your pardon. You were getting how much an hour?

A. I was getting \$1.75 an hour.

Q. How long have you belonged to the United Mine Workers this last time?

A. I belonged to them about a year and a half, probably, something like that.

Q. This last time?

A. Yes, sir.

Q. I am referring to Plaintiff's Exhibit No. 1, which is the Constitution of the International Union, United Mine Workers of America, and I am turning to page 88, and it talks about when you take your obligation. It states:

"President—Fellow Workmen: The United Mine Workers of America requires perfect freedom of inclination in every candidate for membership to its body. An obligation of fidelity is required; let me assure you that in this obligation there is nothing contrary to your civil or religious duties;

page 1669 } with this understanding are you willing to take
an obligation which binds you upon your honor
as a man to keep the same as long as life remains?

"Each candidate answers—I am.

"President—Raise your right hand.

"I do sincerely promise, of my own free will, to abide by the laws of this Union; to bear true allegiance to, and keep inviolate the principles of the United Mine Workers of America; never to discriminate against a fellow worker on account of creed, color, or nationality; to defend freedom of thought, whether expressed by tongue or pen, to defend on

Harrison Daniels.

all occasions and to the extent of my ability the members of our Organization.

"That I will assist all members of our Organization to obtain the highest wages possible for their work; that I will not accept a brother's job who is idle for advancing the interests of the Union or seeking better remuneration for his labor; and, as the mine workers of the entire country are competitors in the labor world, I promise to cease work at any time I am called upon by the Organization to do so. And I further promise to help and assist all brothers in adversity, and to have all mine workers join our Union that we may all be able to enjoy the fruits of our labor; that I will never knowingly wrong a brother or see him wronged, if I can prevent it.

"To all this I pledge my honor to observe
page 1670 } and keep as long as life remains, or until I am
absolved by the United Mine Workers of
America.' "

Have you ever violated that obligation when you joined the A. F. of L.?

A. Did I ever what?

Q. I say, have you ever violated your obligation to the United Mine Workers of America by joining the A. F. of L.?

Colonel Harris: We object to that as immaterial and irrelevant.

Mr. Robertson: All right. I withdraw the question if he doesn't want to answer it.
doesn't want to answer it.

No further questions.

RE-DIRECT EXAMINATION.

By Colonel Harris:

Q. I understood you to say when you rejoined the A. F. of L. you were no longer a member of the Mine Workers.

A. I didn't belong to them at that time.

Colonel Harris: That is all.

The Court: Stand aside.

(Witness excused.)

Colonel Harris: If the Court pleases, the next witness is

Lindon Higgins.

somewhat deaf, and I think, although I don't know, that he does a little lip-reading, and I will have to talk loud. At Mr. Mullen's suggestion, I will swap places with him.

The Court: Very well.

page 1671 } Mr. Robertson: What is the witness' name?

Colonel Harris: Lindon Higgins.

Whereupon,

LINDON HIGGINS

called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Colonel Harris:

Q. What is your name, please, sir?

A. Lindon Higgins.

Q. How old are you, Mr. Higgins?

A. Thirty-five.

Q. Where were you born?

A. In Morgan County, Kentucky.

Q. Have you spent most of your life in Kentucky?

A. Yes, sir.

Q. Were you a member of the Paintsville Local or the Salyersville Local at the time the Laburnum job was going on out in Breathitt County?

A. I was a member of the Salyersville Local.

Q. Are you a member of the Salyersville Local now?

A. Yes, sir.

Q. Do you hold any job with it?

A. President of the Local.

page 1672 } Q. How long have you been President of the Salyersville Local?

A. Since June of this year.

Q. Is that a United Mine Workers Local, or an A. F. of L. Local?

A. A. F. of L.

Q. Are you a carpenter?

A. Yes, sir.

Q. Were you a carpenter back in 1949 during the month of July?

A. Yes, sir.

Q. Were you a member of the A. F. of L. then?

A. Yes, sir.

Lindon Higgins.

Q. Were you a member of the Salyersville Local then?

A. Yes.

Q. During July, 1949—would the Salyersville Local take in laborers?

A. No, sir.

Q. Did you have a conversation with Mr. Bryan on the 27th of July, the day after the men from Codell and Allen-Codell had come over to the job site?

A. Yes, sir, we talked with him down at the lower tipple.

Q. Do you remember what Mr. Bryan said to you and what you said to Mr. Bryan?

page 1673 } A. Speaking to us all as a whole, he asked us to go back to work; and I told him I didn't think I would like to go back to work for him; to settle it in higher headquarters of the United Mine Workers and the A. F. of L., and if they made a decision we would do whatever the outcome was.

Q. What did Mr. Bryan say to that, if anything?

A. It wasn't but just a few minutes from that time until they said it was all over with, and we could go back home.

Q. Who said it was all over with and to go back home?

A. I couldn't recall just who said that. In other words, we weren't going to work.

page 1674 } Q. Where were you working on July 26th?

A. I was working at the schoolhouse.

Q. What sort of work were you doing at the schoolhouse?

A. We were laying the foundations for the building.

Q. Were you there at the schoolhouse when Mr. Hart and the men on strike from Codell and the employees of Codell-Faulconer came up?

A. Yes, sir.

Q. Did they come up anywhere near you? How close did they get to you?

A. The saw horse was about where this table is here, and my buddy and I were working on the inside of the foundation. We were putting joists across.

Q. Do you know any men that were working there by the name of Hackworth?

A. Yes, sir; there were three of them.

Q. Three brothers?

A. Yes, sir.

Q. Were they working that day?

A. Yes, sir.

Q. Did you at any time while those men were there hear anybody threaten any of the Hackworth boys?

Lindon Higgins.

A. No, sir; I didn't hear any remarks to the Hackworth boys.
page 1675 } Q. Did you see any one of this group of men
that came up get up and rub against the Hackworth boys?

A. No, sir; I did not.

Q. Was there anything between those men and the Hackworth men?

A. The two that were over here sawing, no, but the one who was over there with me, we were on the inside of this foundation, Junior and I were.

Q. You and Junior were on the inside of the foundation?

A. We were putting joists across.

Q. How close were you and Junior together?

A. About 14 feet, one at one end of the timber and one at the other.

Q. Did you hear anybody on that occasion threaten to beat or injure or shoot or harm Junior?

A. No, sir; I did not.

Q. Did you hear them threaten to harm either one of his two brothers?

A. No, sir.

Q. Did you see anybody that was drunk?

A. No, sir; not as I could tell.

Colonel Harris: You may take the witness.

page 1676 } CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Higgins, do you hear me or do you read my lips?

A. I have to look. I am pretty hard of hearing.

Q. If you don't see my lips, you cannot hear?

A. Not too good.

Q. When did you arrive in Richmond to attend this trial?

A. Thursday morning.

Q. A week ago, of last week?

A. That is right, sir.

Q. Where are you staying?

A. At the hotel.

Q. Which one?

A. The King Carter.

Q. All the group that came from Kentucky are staying there together?

A. I couldn't say whether they are all there or not.

Lindon Higgins.

Q. How many of you are staying there that you know of?

A. Eight or nine.

Q. Have you discussed this case among yourselves since you got here?

A. Yes, sir.

Q. Have you discussed it with any of the lawyers for the Defendants since you got here?

A. Yes, sir.

page 1677 } Q. Are you a member of the United Mine Workers?

A. Yes, sir.

Q. Are you also a member of the United Construction Workers?

A. No, sir.

Q. Are you a member of the A. F. of L.?

A. Yes, sir.

Q. As I understand it, you were at work at the schoolhouse on Tuesday, July 26.

A. The 26th of July. I don't recall whether it was Tuesday or not.

Q. That was the day that Hart and his group of men came by there?

A. Yes, sir.

Q. And you were at that time a member of the United Mine Workers?

A. No, sir.

Q. When did you join the United Mine Workers?

A. The 13th of January, 1951.

Q. You were already a member of the A. F. of L. local at Salyersville, weren't you?

A. Yes, sir.

Q. And you still are a member of the local at Salyersville?

A. So far, yes, sir.

page 1678 } Q. The reason you joined the United Mine Workers was so you could work as a carpenter out in eastern Kentucky, wasn't it?

A. Yes, sir.

Q. Did you go to the tippie on the 26th after you left the schoolhouse?

A. Yes, sir.

Q. How many men would you say were down there at the tippie?

A. I went from where we were down to the office.

Q. To where?

London Higgins.

A. The office, the Laburnum office. I didn't go on over to the tipple. I went to the office.

Q. How far is it from the office to the tipple?

A. I would say approximately four or five hundred yards.

Q. You stayed up at the office?

A. Yes, sir. There were 25 or 30 people there.

Q. Why didn't you go on down to the tipple?

A. I didn't have any business down there.

Q. You were scared to go down there?

A. No, sir; I wasn't scared to go down there.

Q. You just didn't think you had any business down there?

A. That is right, at that time I didn't have page 1679 } any business down there.

Q. But you went over there to see what was happening, didn't you?

A. Yes, sir; this group that came up there where we were working asked us to go down there with them.

Q. Do you know whether or not the men were afraid to go back to work on the afternoon of July 26 at the tipple?

A. I couldn't speak that only for myself.

Q. You were not?

A. As far as being personally harmed bodily, no, I was not.

Q. But you don't know about the others?

A. No, sir; I can't speak for them.

Q. Did you go back over there on the 27th?

A. Yes, sir.

Q. How many would you say were there when you got there on the 27th?

A. We didn't get in until late, about 8:30, and there were very few fellows in the office, and the Hackworth boys and I stopped there at the office and then we went on over to the tipple. I would say it was about 15 to 9 or probably 9 o'clock when we got over to the tipple.

Q. You didn't go to work that day?

A. No, sir.

Q. Why?

page 1680 } A. Because nobody wanted to go to work.

Q. Why?

A. I don't know.

Q. Didn't you think if you crossed that picket line it wouldn't be very healthy for you, would it?

A. I wasn't afraid of the picket line.

Q. Sir?

A. I wasn't afraid of the picket line.

Lindon Higgins.

Q. But you didn't think it would do you any good to cross it, did you? I mean, you were liable to get hurt if you crossed it?

A. If there was a picket line there, there wasn't any when I went through.

Q. But I say, if there was one there and you tried to cross it, you think you were liable to get hurt, don't you?

A. As being a member of a union I wouldn't like to cross any picket line.

Q. That wasn't exactly what I asked you. I say, leaving all that out, if there was a picket line and you undertook to cross it under the circumstances on that day, you think you are liable to get hurt, don't you?

A. Personally I wouldn't think any one would hurt me myself.

Q. Do you think anybody else would have got page 1681 } hurt who undertook to cross it?

A. I wouldn't think so.

Q. Are you a pretty good shot?

A. I made expert when I was in the service in the Army.

Q. If I was working on the tippie and you were laying out in the woods do you think you could shoot me off?

Colonel Harris: We object to that, if the Court please.

Mr. Robertson: I think that is a proper question, Your Honor. I want to see what the situation was there. I think it is a proper question.

The Court: I will allow it for what it is worth.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. If I was working on the tippie—of course I hope you wouldn't want to—but if I was working on the tippie and you were out in the woods, do you think you could shoot me off?

A. If I wasn't too far away and had a good rifle I probably could, yes. I have killed squirrels.

Q. The woods come down there pretty close, don't they?

A. Yes, sir. The woods come pretty close there.

Q. If I was working on the schoolhouse and page 1682 } you were out in the woods out there near the schoolhouse and you wanted to shoot me off, do you think you could?

A. Why, yes, I could. It could be done.

Lindon Higgins.

Q. Mr. Higgins, when you joined the A. F. of L. you took an obligation to the union, didn't you?

A. Yes, sir.

Q. I am going to read an obligation here and ask you if that is the obligation you took.

Mr. Mullen: Is that A. F. of L.?

Mr. Robertson: Yes.

Mr. Mullen: No such evidence has been put in.

Mr. Robertson: I am asking if he took the obligation. I can't ask but one question at a time, Your Honor. We will put it in as an exhibit with this witness' testimony.

The Court: Very well.

By Mr. Robertson:

Q. If I read too fast for you to hear, you flag me down. I will ask you if when you joined the A. F. of L. you took this obligation:

"I (giving your name), of my own free will and accord—in the presence of these members—here assembled—do solemnly and sincerely promise—on my sacred honor—that I will never reveal—by word or deed—any of the business of this United Brotherhood—unless legally authorized to do so.

I promise to abide by the Constitution and Laws
 page 1683 } —and the will of the majority—observe the local
 trade rules of this Order—and that I will use every honorable means—to procure employment for brother members. I agree that I will ask for the Union Label—and purchase union-made goods—and employ only union labor—when same can be had. And I further agree that—if at any time it should be discovered—that I have made any misstatements—as to my qualifications for membership—I shall be forever debarred from membership—and donations in this order. I pledge myself to be obedient to authority—orderly in the meetings—respectful in words and actions—and charitable in judgement of my brother members. To all of this I promise and pledge—my most sacred word and honor—to observe and keep—and the same to bind me—as long as I remain a member of this Brotherhood. And I further affirm and declare—that I am not now affiliated with—and never will join or give aid—comfort—or support to any Revolutionary Organization—or to any organization that tries to disrupt—or cause dissention in any Local Union—District Council—State or Provincial Council or the International Body—of the

John McClellan.

United Brotherhood of Carpenters and Joiners of America."

Were you under that obligation when you joined the United Mine Workers of America?

A. You don't expect me to remember all that, but if that is the obligation of the A. F. of L., I was.

Mr. Robertson: That is all.

page 1684 } RE-DIRECT EXAMINATION.

By Colonel Harris:

Q. When you were out there on the Laburnum job the question has been asked you if anybody could be shot from the woods if they were working on the schoolhouse, and you said in your judgment if you had a good rifle they could. Or was that the tippie you were talking about?

A. That is correct, either place.

Q. Did you hear of any person that was shot out there either off the schoolhouse or off the tippie?

A. I never have.

Q. Did you hear of anybody that was shot at at the schoolhouse or on the tippie?

A. I did not.

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JOHN McCLELLAN

called as a witness in behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Colonel Harris:

Q. What is your name, please, sir?

A. John McClellan.

page 1685 } Q. Mr. McClellan, how old are you?

A. 36.

Q. Where were you born?

A. Van Lear, Kentucky.

Q. Were you raised in Kentucky?

A. Yes, sir.

Q. Are you living in Kentucky now?

A. Yes, sir.

Q. Whereabouts in Kentucky do you live?

John McClellan.

A. Whittonsville.

Q. How far is that from Paintsville?

A. About seven miles, I think. Between six and seven miles.

Q. How big a place is Whittonsville?

A. There might be half a dozen houses and two stores.

Q. Were you working for the Laburnum Construction Company during the month of July when they were doing some work for the Pond Creek Pocahontas Coal Company?

A. Yes, sir.

Q. In Breathitt County?

A. Yes, sir.

Q. What kind of work were you doing?

A. I was iron worker and working on the high line there to hoist material up the hill.

Q. Were you a member of any union at that time?

A. I was a member of the A. F. of L. My dues page 1686 } were behind in the United Mine Workers.

Q. How far behind were they, do you remember?

A. The last work I done in the mines was—I believe it was the second day of March, and I left there and got the job with the Bristol Iron and Steel at VanLear and then went to Pond Creek over in Breathitt County.

Q. The work you were doing at Pond Creek was not mine work at all, was it?

A. No, sir.

Q. You say you were working on the high line. Will you tell the jury what you mean by the high line?

A. Well, it was a large cable stretched from one hill to the other.

Q. What was it used for?

A. We hoisted material up on to the tippie and all up and down what we call the button line that brings coal off the hill 918 feet from wheel to wheel, and we hoisted material with this high line up this hill in order to put this button line in.

Q. What wages did you get while working on the high line?

A. I got \$2.25 an hour and all over time was double time, which made \$4.50.
page 1687 } Q. Did anybody during the month of July ask you to join the United Construction Workers?

A. No, sir.

Q. On the 26th of July, 1949, were you at work when a

John McClellan.

group of workers from Codell and Allen-Codell came to the job site?

A. That is right.

Q. Were you where you could see those men?

A. I talked to those men.

Q. Did you hear any cussing?

A. No, sir.

Q. Did you hear anybody make any threats toward anybody else?

A. No, sir.

Q. Did you see any drunks?

A. No, sir.

Q. Did you see any violence take place?

A. No, sir.

Q. Did you see anybody with guns?

A. No, sir.

Q. Did you go to the meeting in the City Hall at Paintsville on the night of the 26th?

A. I was at that meeting in the City Hall, I won't say the 26th, but the night that Bert Preston, Bryan, and the rest of the carpenters were there. Dates I am not
page 1688 } positive on the dates, but the meeting in the City Hall I was at when them men was present.

Q. All right. Did you hear Mr. Bryan make any talk to those men?

A. Yes, sir.

Q. Tell the jury what you remember of what Mr. Bryan said to the men.

A. It was a carpenters meeting. I was an iron worker and they told me I could come in with them. They seemed scared or something or other. Bryan told them—Bert Preston and Bryan were two of the main ones in the talking. Bryan promised Bert he would put on his overalls, take the sign down, the picket sign down, and lead the men over on to the job.

Q. What did Bert Preston say?

A. Bert told him if he would do that they would go back to work with him.

Q. Were you there the next day?

A. Yes, sir.

Q. Did you see Mr. Bryan take down the picket sign?

A. No, sir; I did not.

Q. Did you see him lead anybody across the picket line?

A. We followed him down the road, but there wasn't no picket sign there when I went down.

John McClellan.

Q. What time did you get there?
page 1689 } A. I was in behind the crowd of carpenters
that went down. Of course there were a few
there at the office when I got in.

Q. There were a few at the office then?

A. Yes.

Q. If anybody took down a picket sign, it was taken down
before you got there that morning?

A. Yes, it was taken down before I got there because I
never saw it.

Q. You went on behind Mr. Bryan. He led the way. Where
did you go?

A. We went over to the tipple.

Q. Did you work?

A. I started to work.

Q. How long did you work?

A. I couldn't say that. We were over there maybe an hour
and a half or two hours or something like that. I got the
high line started to operating, and I called Dave on top of
the hill over the phone. We were all sitting there ready and
I was trying to get the carpenters to hook their lumber on
so I could start it up the hill for them.

Q. Did they?

A. No. One of them hollered, "Sh-h! trouble, trouble."

Q. Were they out where they could be seen?

A. Well, me and the man I was trying to get
page 1690 } hooked were the only ones out. The rest of them
were up at the tipple.

Q. Were you scared?

A. No, I wasn't scared.

Q. It was your job to operate the high line?

A. That is right, to keep the high line moving, and I had a
man on top of the hill who did the hoisting and I was at the
bottom of the hill on the phone. I had to keep my eye on the
load as she went up and down the hill in order to tell my man
on top of the hill how to handle it, and so forth. He was in
the blind and couldn't see the hoist or nothing. I would call
him over the telephone.

Q. How long were you there ready to haul the lumber be-
fore the carpenters left?

A. I couldn't say the time on that.

Q. Could you give us your best judgment? You don't have
to be correct to the minute.

A. I would say it couldn't have been over an hour and a
half at the most.

John McClellan.

Q. Did anybody ask you to give any orders over the tele phone to the head house?

A. Yes, they called. They run out there and told me to tell the men on top of the hill that Delinger said to come off and I told them I didn't handle orders like that, to send Dillon or Patrick out there to tell them.

Q. Did you ever carry out Mr. Dillon's order, page 1691 } Mr. McClellan, or Mr. Patrick's order to call them off the job?

A. No, sir; I never did.

Q. Did anybody do it in your presence?

A. Dillon or Patrick one came out there. I sent them word out there if they wanted them men off the top of the hill to come out there and tell them themselves, either Dillon or Patrick one come up there and told them. I would not carry those orders out.

Q. All right. Did you ever talk to any representative of Laburnum or did they ever talk to you about making a statement for them?

A. Yes, sir.

Q. What did you say on that occasion?

A. I told them I wasn't afraid to go over there and work.

Q. Did they take a statement from you?

A. No, sir.

Q. Where was it that that conversation took place?

A. At the Herald Hotel in Paintsville.

Q. Do you recall who it was that you told you were not afraid to go to work?

A. Yes, sir.

Q. Who was it?

A. Ham Bryan, sitting right there.

Colonel Harris: You may take him.

Mr. Robertson: Stand aside.

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JOHN T. ARNETT,
called as a witness on behalf of Defendants, having been first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Colonel Harris:

Q. Mr. Arnett, what is your full name?

A. John T. Arnett.

Q. Do you spell it A-r-n-e-t-t.

A. Yes, sir.

Q. How old are you, Mr. Arnett?

A. Thirty.

Q. Where were you born?

A. Henrietta, Oklahoma.

Q. Were you raised in Kentucky?

A. Yes, sir. My family moved back to their home after I
was two years old.

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Q. Were you out on the job site of the Labor-
page 1694 { num Construction Company in Breathitt County,
Kentucky, in July, 1949?

A. I was.

Q. At that time, were you a member of any union?

A. I was a member of the A. F. of L, Carpenter's Local, at
Paintsville, Kentucky.

Q. How long had you been a member of the A. F. of L.?

A. Approximately four months.

Q. Are you a member of any union now?

A. Member of the United Mine Workers.

Q. How long have you been a member of the United Mine
Workers?

A. Since the latter part of August in 1949.

Q. Did you have any sort of conversation with a man named
Hart on July 26th in the toolhouse at the job site of the La-
burnum Construction Company?

A. Yes.

Q. Who was in the toolhouse first, you or Mr. Hart?

A. Mr. Hart.

Q. What was your conversation with Mr. Hart?

A. I asked him if he was—I don't know the word for it
there—implying that that was United Mine Workers, and I
told him that if he was representing himself to be the United

John T. Arnett.

Mine Workers, that it was probably a lie, "a damned lie," is the exact word.

Q. Did you all then get in a fight?
page 1695 } A. We did not. We were very friendly. Mr. Hart was very nice.

Q. Did he explain to you anything after that?

A. He explained to me all that I asked him, very nicely. I asked him what advantage it would be to join with the United Construction Workers. After, he explained that it was the Construction Workers affiliated with the Mine Workers. They gave us the rate for carpenters and others. He told me he wasn't interested in the carpenters particularly, but he wanted the helpers and laborers.

Q. Was a man by the name of Bert Preston in the toolhouse while you were there?

A. Yes, sir. Mr. Hart and Mr. Preston were in conversation when I entered.

Q. Tell the part of that conversation that you heard.

A. I heard Mr. Preston tell Mr. Hart that if he established a legal picket line, the A. F. of L. members would respect it.

Q. Did he say what would be done if he did not put up a picket line?

A. He said we would sure as hell work.

Q. Did you go to work on the 27th?

A. No, sir.

Q. Did you go to work on the 28th?

A. No, sir, I didn't go to work, but I went back
page 1696 } to the site, I believe, on the 28th.

Q. When you got up there to the job site, did you see any picket sign?

A. Yes, sir, I did.

Q. Do you recall what happened up there at that time?

A. There was a bunch of us, 7 or 8, were issued new badges, with a work number to identify us. Mr. Bryan told us to go ahead and work; that it was all right.

We started over the hill. There is a bank there, a hill we call it, and I saw this picket sign still there. I turned around and told Mr. Bryan it looked like he was trying to get us to go back to work without any union representation, and I didn't want to work unless it was represented by someone.

Q. What did he say to that?

A. He asked me if I was afraid to work. He said if I was, he would put on his overalls and lead us.

Q. What did you say when he asked you if you were afraid?

A. I told him I wasn't afraid as far as physical fear was

John T. Arnett.

concerned; that those people there were my friends and neighbors, but I didn't want to work and violate any union laws.

Q. When those people came over there on the 28th, who were with Hart, did you see any of them?
page 1697 } A. I did.

Q. Were they a bunch of hoodlums, or were they your friends and neighbors from that part of the country?

A. They were my friends and neighbors and relatives. Part of them were my cousins.

Q. Has Mr. Bryan ever talked to you since then?

A. Yes, sir.

Q. What did you all talk about?

A. He wanted to know if I could be a witness for him in this case.

Q. How long did you talk about that?

A. I wouldn't know the exact length of time.

Sometime after that, he wanted me to give him a statement at Paintsville; and then sometime after that, I believe it was in November of 1950, he came to my house, him and Mr. Sublett, the President of the Paintsville Local, and wanted me to come on up here even then.

Q. Now, let's go back to the statement. Did he ask you to sign a prepared statement?

A. He did.

Q. Had the statement that he wanted you to sign already been written out?

A. Yes, sir.

Q. Typed before he came to you with it?

A. It was.

page 1698 } Q. Did you read any part of it?

A. Yes, sir. Mr. Bryan and I read it together. I told him I didn't want to sign anything in the dark, so to speak.

Q. What took place then, after they brought you this statement already made out and you read it? What happened?

A. We read it together, and each time we came to a paragraph or statement that I couldn't verify, we would check it off. I believe there were approximately two or three small paragraphs left.

Q. Then after he checked it off—you mean he would "X" it out or put a checkmark out at the end of the paragraph?

A. We would run an "X", I believe that is the way he did it, across it.

John T. Arnett.

Q. After you had talked to him about the "X's," did you sign?

A. I signed the bottom of the statement, yes, sir.

Q. Do you recall how long ago that was?

A. I do not recall the exact date, but it was shortly after this stoppage of work over there.

Q. Do you recall whether it was in the winter time or in the summer time?

A. I would say in the summer time before we started back to work under the Mine Workers.
page 1699 } Q. Do you recall when you went back to work with the Mine Workers?

A. Not the exact date. It was approximately three weeks, maybe a month, after we stopped.

Q. Regardless of the date, is your recollection clear about the conversation you had with Mr. Bryan?

A. It is.

Q. On this occasion when you talked to Mr. Hart in the tool-house and immediately before it and immediately after it, did you see any of these friends and neighbors and kinspeople of yours who were drunk?

A. I did not.

Q. Did you hear anybody make any threats to anybody on that occasion?

A. No, sir. They were only talking together like friends will when they meet.

Q. Did you see anybody rub up against this group that came over there? Did you see them rub up against any of the men who were working for Laburnum?

A. No, sir, I didn't.

Q. Did you see any guns on that occasion?

A. I saw no guns, no whisky, no signs of intoxication.

Colonel Harris: You may take the witness.

page 1700 } CROSS EXAMINATION.

By Mr. Robertson:

Q. You say you are 30 years old?

A. I am.

Q. Are you married?

A. Yes, sir.

Q. Do you have a family?

A. One child.

Q. Where do you live?

John T. Arnett.

A. At Arthurmabel, in Magoffin County, Kentucky.

Q. That is in Magoffin County?

A. It is.

Q. How far is that from the job site?

A. Eight miles.

Q. These people who were out there on the 26th were people from all through there that are your kinpeople and friends and neighbors?

A. Yes, sir.

Q. It would be very awkward, then, for you to say anything against them, wouldn't it?

Colonel Harris: We object to that as argumentative.

The Witness: No.

Mr. Robertson: I think that is a proper question on cross examination. I think they have the boy on the spot, and I am entitled to show it.

page 1701 } Colonel Harris: We object, and we ask the Court to instruct the jury to disregard the statement of counsel, "We think they have the boy on the spot."

The Court: Gentlemen of the jury, disregard the statement that he thinks they have the boy on the spot; disregard it.

By Mr. Robertson:

Q. John, haven't they got you on the spot?

A. No, sir, they haven't. I won't lie for my friends, my father, or no one else.

Q. When did you join the United Mine Workers of America?

A. I believe it was in the latter part of August in '49, 1949.

Q. Did you join them—are you a carpenter?

A. Yes, sir.

Q. You joined them so you could go to work as a carpenter in Eastern Kentucky, didn't you?

A. I started back to work before I joined, and then, of course, they asked me to sign up with them after I started to work.

Q. But to keep your job, you had to join up with them, didn't you?

A. I don't know about that. I could have worked on with Mr. Hart, of course, or someone else. Our carpenters in the same Local did work there for some time.

page 1702 } Q. They wouldn't let you work out there where you wanted to work unless you joined up with the United Mine Workers of America, would they?

John T. Arnett.

A. I started over there with the intention of working there because I lived there. I knew I would join the Mine Workers when I joined this other union.

Q. I am very sympathetic to you, but I will ask you to answer my question. In order to work out there where you wanted to work, you had to join up with the United Mine Workers, didn't you?

A. Well, I wouldn't say that.

Q. What would you say?

A. I could have worked on this carpenter work, but that wasn't what I started there for. I am not a carpenter.

Q. What are you?

A. I am a fireman by trade.

Q. How did you happen to join the United Mine Workers?

A. So that I could work as a United Mine Worker.

Q. As a carpenter?

A. No, sir.

Q. As a fireman?

A. As a tippie mechanic, repairman on the coal tippie.

Q. You couldn't do that work and keep your job unless you joined up with the United Mine Workers?

A. Naturally, you won't work as a tippie mechanic without being a Mine Worker.

Q. You are now an officer of the United Mine Workers Local at Evanston, aren't you?

A. Yes, sir. I am Recording Secretary.

Q. That is that little place there at the job site in Breathitt County where Laburnum was working?

A. Evanston, yes, it is.

Q. You weren't scared on the 26th?

A. I was not.

Q. Why didn't you go back on the 27th?

A. Because we were supposed to have a meeting in Paintsville of union representatives and A. F. of L. The steward told us to meet him there at Salverville at 10 o'clock and decide what we were going to do, the A. F. of L.

Q. The statement that you gave Mr. Bryan, you read it before you signed it, didn't you?

A. I glanced at it over his shoulder, trying to read it with him. He read it aloud.

Q. I thought you said a moment ago you read it together.

A. I was reading it with him, trying to.

(Document exhibited to Defendants' counsel.)

John T. Arnett.

By Mr. Robertson:

Q. I am going to ask you to look at that and see if that is the statement you signed.

A. (Examining document.) This is definitely page 1704 } not the same statement, because there are no markings on it. Of course, this is my signature, I expect, on the bottom of the sheet.

Q. You think that has been changed since you signed it?

A. Yes, sir. There were pencil marks on the one I signed, except maybe the back sheet, and there was just a small paragraph on that.

Q. What is the date of that statement?

A. I do not remember the exact date when I met Mr. Bryan.

Q. What date has it got on it?

A. It isn't dated. It just says "of August, 1949." It doesn't say what date.

Q. If it was in August, it was before you joined the United Mine Workers, wasn't it?

A. Yes, it was.

Q. So whatever statement you gave Mr. Bryan, you gave him before you joined the United Mine Workers?

A. Oh, yes, sir.

Q. I am going to read the statement and ask you to stop me when we come to anything that is wrong.

Mr. Mullen: May I see it a moment before you read it?

(Document handed to Mr. Mullen.)

Mr. Mullen: Go ahead.

page 1705 } By Mr. Robertson:

Q. You stop me when I come to anything that is wrong.

"State of Kentucky

"County of Johnson, to-wit:

"This day personally came before me, Jewell Young, Notary Public—"

A. Mr. Bryan was the only one present when I was in there.

Q. —"in and for the County aforesaid in the State of Kentucky, John T. Arnett, who being duly sworn made oath as follows:

John T. Arnett.

"That he resides at Arthurmabel, Kentucky, and is a carpenter, being a member of Carpenter's Local Union No. 646, Paintsville, Kentucky, which Local Union is affiliated with the Building Trades Department of the American Federation of Labor.

"That prior to July 26, 1949, he was referred by said Local Union No. 646, Paintsville, Kentucky, to Laburnum Construction Corporation, hereinafter called Laburnum, of Richmond, Virginia, for work as a carpenter on a job then being performed by Laburnum for Pond Creek Pocahontas Company in connection with the construction of a coal preparation plant at the No. 1 Kentucky Mine of Pond Creek Pocahontas Company, Breathitt County, Kentucky.

"That on July 26, 1949, at 7:30 o'clock a. m.,
page 1706 } he reported to Laburnum for work at the job site and was assigned to perform certain work on coal preparation plant at foot of mountain.

"That he performed his work to the best of his ability until about 12:30 o'clock p. m., when a group consisting of an estimated 75 to 100 men—"

A. I would say 30 to 40 was my estimate.

Q. —"not employed by Laburnum or Virginia Mechanical Corporation, came to the job site; that said group was headed by William O. Hart of Pikeville, Kentucky, who acted as spokesman for the group, and who announced that he was Field Representative of a labor union known as United Construction Workers, a branch or division of District 50 of the United Mine Workers of America.

"That said William O. Hart stated that he and his group would not permit the employees of Laburnum or Virginia Mechanical Corporation to continue with their work at the job site unless they joined said United Construction Workers.

"That affiant has been advised and believes that with one or two exceptions, all of the employees of Laburnum and Virginia Mechanical Corporation in connection with said work were members of Local Unions affiliated with the Building Trades Department of the American Federation of Labor, or had made application to become members of such Local Union.

"That affiant refused to join the said United
page 1707 } Construction Workers, and has been advised and believes that all other employees of Laburnum and Virginia Mechanical Corporation did likewise,"—

John T. Arnett.

A. How did you start that that time, that last statement?

Q. "That affiant," that is you, "refused to join said United Construction Workers, and has been advised and believes that all other employees of Laburnum and Virginia Mechanical Corporation did likewise, with the exception of a few laborers, who were surrounded by said William O. Hart and his group and were threatened with violence unless they signed certain blanks making application for membership in said United Construction Workers."

A. I wasn't advised to that effect, that there was any threats or violence.

Q. "That said William O. Hart and his group then advised the employees of Laburnum and Virginia Mechanical Corporation that they could not continue with their work; that a picket line would be established at the job site, and that he and his group would take such steps and do such things as might be necessary to prevent, forcibly if necessary, the resumption of work by employees of Laburnum or Virginia Mechanical Corporation."

A. I don't think he was told it exactly like that. After Mr. Preston told him we would observe a picket line, page 1708 } he said he would establish one.

Q. "That some of the group with William O. Hart appeared to be intoxicated or semi-intoxicated, and that affiant believed that he might be beaten, shot, or otherwise seriously injured by these persons if he continued with his work,"—

A. That should be stricken out. I didn't sign anything to that effect.

Q. —"or resumed work.

"That there was no police protection of any kind at the job site.

"That affiant and many of the employees of Laburnum and Virginia Mechanical Corporation believed that some of the group headed by said William O. Hart might be armed with concealed weapons"—

A. I didn't sign any such statement as that, either.

Q. —"and that these weapons would be used to prevent the resumption of work by employees of Laburnum and Virginia Mechanical Corporation.

"That affiant and others employed by Laburnum and Vir-

John T. Arnett.

ginia Mechanical Corporation believed that if they continued to do their work or resumed work, they would run a serious risk of being injured or shot at the job site,"—

A. I didn't make any such statement as that, either.

Q. —"or being shot by persons using high-powered rifles and hiding in the hills, or being shot by persons
page 1709 } in ambush along the desolate roads leading to and from the job site."

A. I hadn't any such beliefs as those.

Q. "That affiant conferred with other employees of Laburnum and Virginia Mechanical Corporation, and that it was agreed that it would be too dangerous for them to continue with their work, and that because of the threats, intimidations and other actions and tactics of said William O. Hart and his group, affiant and other employees of Laburnum and Virginia Mechanical Corporation have been afraid to perform further work at the job site since July 26, 1949, except that a few men may have performed work for not over one-half hour on the morning of July 27, 1949.

"And affiant further made oath as follows:

"1. That during a discussion in the carpenters' toolhouse, the said William O. Hart advised B. E. Preston, Business Agent of said Local Union No. 646, that he did not expect to have a picket line at the job the following day, July 27, 1949; that in reply, said B. E. Preston then advised Hart that if there was no picket line, the carpenters would work. And that then said Hart stated that if the carpenters and other employees of Laburnum worked, he would bring to the job site 300 men from Beaver Creek who would kick off the job the employees of Laburnum."

A. That was kind of misinterpreted there. It
page 1710 } doesn't sound like it should be.

Q. "2. That when said William O. Hart and his group came to the site on July 26, 1949, he said, among other things, that the carpenters employed by Laburnum were taking jobs which should be filled by United Construction Workers; that the United Construction Workers' rate for carpenters was \$1.86 an hour; that it would be necessary for the carpenters to join United Construction Workers if they wished to continue with their work."

A. He told us we could work on as we were with the A. F. of L. All he was interested in was the helpers and laborers.

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Q. "That while he was not requesting the carpenters to get out of their A. F. of L. Local Unions, he did expect them to join the United Construction Workers' Local and receive a card from and commence paying dues to the United Construction Workers.

"Witness my hand this August 6, 1949.

"JOHN T."—

The middle initial?

A. "T."

Q. "John T. Arnett, Affiant,

"Witness: A. Hamilton Bryan."

And I think I ought to call your attention to the fact that there is no Notary's certificate filled in on it.

page 1711 } A. No, there was no Notary there. Mr. Bryan
was the only one present.

Q. On page 2—

A. Where is the one that I signed that was marked out? There were some pencil markings on almost every page.

Q. I am coming to that in a moment.

On page 2, I call your attention to the fact that the word "many" is inked out, and "some" written in the place of it.

I call your attention, lower down on page 2, that the word "were" is inked out and "might be" is written in.

Those are the only two changes on that paper.

Now, will you explain to the jury wherein that statement is wrong?

A. (Examining document.) All along there where I was objecting as you went along about the drunken men, armed men, and so forth, I didn't say anything like that, just as I said a while ago. It seems that on the back here there has been some typing. Maybe there hasn't, but the best I remember there wasn't that much typing on the bottom of this thing.

Q. Do you claim that that is a different statement from the statement you signed for Mr. Bryan?

A. I think so, because the one that I signed had pencil markings, "Xing" it out, yes, sir.

John T. Arnett.

page 1712 } Mr. Robertson: I have no other questions.
Colonel Harris: May we see that just a second?

(Document handed to Defendants' counsel.)

The Witness: There wasn't but two pages to the one I signed.

Mr. Robertson: I want to ask the witness one more question.

By Mr. Robertson:

Q. That is your signature?

A. It looks like my scratchy signature. I could tell more by checking it closer.

Q. I am going to ask you to check it closer in a moment.

A. Yes, sir, I will. I don't think anyone else can write as awkward as I can, because I had an accident to my hand and I still write left-handed.

Q. Is that or is that not your signature?

A. Yes, that seems to be; yes.

Mr. Robertson: We offer the statement in evidence, and ask that it be marked Exhibit Arnett No. 1.

(The statement referred to was marked Exhibit Arnett No. 1 and received in evidence.)

Mr. Robertson: I have no other questions.

page 1713 } RE-DIRECT EXAMINATION.

By Colonel Harris:

Q. This statement starts off "State of Kentucky, County of Johnson, to-wit: This day personally came before me, Jewel Young, a notary public in and for the County aforesaid in the State of Kentucky, John T. Arnett, who being duly sworn made oath as follows:"

Was there any young lady there?

A. No, there wasn't any young lady there.

Q. Did anybody put you under oath?

A. No one put me under oath unless it was Mr. Bryan and I don't believe he asked me to swear. He said he didn't have any notary public there, unless he himself was one.

Q. This starts off that there was a young lady there, a

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notary public, but I will ask you to look and see if any young lady signed that as a notary public. Do you see any signature of a notary public down there?

A. I do not.

Q. Do you see any seal of a notary public impressed on that last page?

A. I do not.

Q. I ask you to look at the typing on this last page. Does the typing up at the top which is double-spaced look like it was put on by the same typewriter as that single-spaced stuff?

page 1714 } Mr. Robertson: Wait one minute. If Your Honor please, I don't want to object to anything, but I do recall the attention of the Court to the fact that he is leading the witness in a most outrageous way. That is all I have to say about it.

The Court: Don't lead the witness, Colonel.

Mr. Robertson: He is just telling him what he wants to say and then he says it, but it is all right with me.

By Colonel Harris:

Q. Look at that and tell the Court and jury whether or not that looks to you to be the same typewriting.

A. It doesn't look to be the same to me.

Q. All right, now. Do you notice that the next to the last line and your signature are superimposed one on the other?

A. They are.

Q. Was that the condition in which you signed the paper out there?

A. It must have been if the typing is under, and it seems to be. I didn't think, though, that they were that close. They are related to each other, but they obviously are.

Q. Which looks to you to be on top, the typing or the penmanship?

page 1715 } A. The penmanship is definitely on top.

Q. That is the way it looks to you?

A. It does.

Q. To take your recollection of it, will you look and see if you find any pencil mark on page 1?

A. I don't see any pencil mark on page 1.

Q. Will you look at page 2 and see if you can find any pencil mark.

A. I do not.

Q. What is your recollection about asking Mr. Bryan to "X" out?

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A. I definitely told him to "X" out some of the statement which I signed. This could very easily be the back sheet of that statement, but I do not believe that that is the front, because he "X'd" out some of the marks that I signed.

Q. You saw him do that?

A. He did right there, yes, sir.

Q. You see no sign of any "X's" on there?

A. There are no signs of any "X's" on this paper.

Colonel Harris: You may take him.

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ROBERT R. FOHL, JR.

called as a witness in behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Please state your name.

A. Robert R. Fohl, Jr.

Q. Where do you live?

A. 5701 Bromley Lane, here in Richmond, Virginia.

Q. How old are you, sir?

A. Thirty-seven years old this year.

Q. Married?

A. Yes, sir.

Q. Family?

A. Two children going to Westhampton School out in the West End.

Q. How long have you live here?

A. Four years.

Q. Where were you born?

A. Indiana.

Q. What is your business?

A. Official capacity?

page 1717 } Q. Yes.

A. Here in Richmond, Regional Director for District 50, United Mine Workers of America and United

Robert R. Fohl, Jr.

Construction Workers in the western portions of Virginia and North Carolina.

Q. What region is this in?

A. It is Region 19, the number.

Q. How long have you been the Regional Director of Region 19?

A. Four years, since I have been here in Richmond.

Q. Where were you before that?

A. I worked in the Washington office. I also worked as director in Albany, New York. I have worked in Indiana and various parts throughout the United States and Canada.

Q. In 1948 was Hopewell under your jurisdiction?

A. Yes.

Q. Did District 50 or United Construction Workers have any employees of any of the companies over there organized?

A. We had a number of companies in this region, not only here in Richmond but also Hopewell, as you have spoken of, and we have there alone nearly 4,000 members with the Allied Chemical and Dye Corporation, Hercules Powder Company, Celanese Corporation of America, Continental Can, such smaller groups as Coastal Stevedoring and others, and that is in Hopewell alone, the companies I named.

Q. How about Solvay Process Company?
page 1718 } A. Yes, that is Allied Chemical and Dye, which I mentioned, which is better known as the Solvay Process Division of that company.

Q. Did you in 1948 undertake to organize certain employees of the Laburnum Construction Company who were doing some work for the Solvay Company?

A. Yes, we did, in 1948. I think it was a combination not only of we organizing them but they wanting to organize themselves.

Q. They were the skilled laborers or common laborers?

A. They were the common laborers, it so happened.

Q. When you looked into the matter had they been organized?

A. When you organize workers we take what they say and as far as we could gather from them they had no representation, they had no union, they saw no union, they were paying no dues, the people that we talked to.

Q. Did you proceed to organize them acting there through your Hopewell office?

A. We had a number of representatives. It so happened at that time, in Hopewell—we changed representatives right along at that time—and we had three representatives that

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were working with those people during that period in 1948, and we did sign up a very considerable number of those workers.

page 1719 } Q. All those men were under your direction?
A. Yes, they were.

Q. What time in 1948 did you sign them up?

A. Those workers signed membership application cards into this organization originally I believe in April of 1948, and we did not contact Mr. Bryan at Laburnum at that time because I presume we didn't feel we had a majority of them, but later on in October a very substantial number of those workers were signed up, they came to our office there in Hopewell wanting us and urging us to act in their behalf, and at that time we did contact, I contacted Mr. Bryan.

Q. You had signed these men up before you contacted him?

A. Absolutely. There would be no purpose in contacting him otherwise.

Q. Were any of them paying dues or had any of them paid initiation fees?

A. Yes, some of those workers I know had paid initiation fees and dues.

Q. When did you contact Mr. Bryan?

A. I know I saw Mr. Bryan with representatives from Hopewell on October 27 and November first. I believe I first called Mr. Bryan about a week before that first meeting. At that time he told me he was going to be out of town, I believe, and would meet on this first date that I mentioned October 27.

page 1720 } Q. Did you meet with him on that day?

A. Yes. With one of the representatives I went to the Laburnum Office over here on Main Street, up on the second floor, as I recollect, and we sat down and talked with Mr. Bryan at that time.

Q. Did you reach any conclusion or what did he tell you?

A. I think, as usually happens in those first meetings, and I know on the telephone more than likely, indulged in the usual pleasantries and what-not, and tried to get acquainted with him. We also advised him who we were and what the organization was and that we did represent a majority portion of that particular group of his workers in Hopewell. I think the first meeting I met with Mr. Bryan was more or less confined to that type of discussion and the request that we be allowed to bargain and to draw up a contract for wages and working conditions for that particular group of people.

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Q. Did Mr. Bryan at that time claim they belonged to any other union?

A. He did mention the fact that he operated under an A. F. of L. contract, but there was at that time no proof shown at the meeting nor do I recollect him particularly claiming that the laborers—I am talking about the first meeting—came under any contract. He didn't show any proof of page 1721 } it at any meeting, of course, by way of a signed contract.

Q. Then when did you meet with him again?

A. On the second meeting, November first, he had Mr. Joinville in the meeting with him. Of course that was 1948. I hadn't been here in this region too long and didn't know too many of the other labor leaders in the city. I didn't know Mr. Joinville when I walked in. I assumed he was maybe connected with Laburnum, but as the meeting progressed I did find out he was with the Richmond Building Trades Council. We just pursued the subject further in this second meeting that we did desire, as those workers wanted us to do, to represent them and to draft up working conditions suitable to them for them.

Q. What were you told at that meeting?

A. Again I think we went into it in a little further detail, that particularly their skilled workers were organized under the A. F. of L. I know we walked out with Mr. Joinville after we had the little meeting, and I think it was Representative Shuey and I, we talked with him downstairs. I think he was more or less apologetic that some groups of the A. F. of L. didn't do too good a job in servicing and representing their particular crafts. I think it is more or less notorious that the laboring group in the A. F. of L. are very, very poorly represented.

Q. Did Mr. Bryan at that meeting agree to page 1722 } negotiate with you for those laborers or did he refuse?

A. I did not get any definite answer. Our request stood that we desired to work out an agreement for those laborers there at Hopewell on that job. We were waiting an answer from him as to what he would do.

Q. Did he show you any contract that he had for the laborers?

A. He did not.

Q. Did you find out afterwards what had been done with regard to those laborers after you had contacted Mr. Bryan?

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A. I didn't talk to Mr. Bryan any more after the November first meeting. I was more or less, as we usually do in those cases, waiting for him to let us know what he might be willing to do. But immediately thereafter I received word from our representatives in Hopewell, many of those laborers came up to the office and advised the representative in Hopewell that a representative of the A. F. of L. had come in to the Solvay Process Plant wearing a Laburnum badge and had gone around and attempted and also succeeded—of course assuming a position of the company I assume—to sign many of those workers on A. F. of L. cards. Whether it was right at that particular time, too, it was within a day or so that we also found out or learned that a 9- or 10-cent wage increase had been granted the laborers. When word came to me that a representative was walking around on the inside of
 page 1723 } the company's premises signing up workers, it *struck* me as something that wasn't too proper and of course it would strike anybody in my position, I presume. I called up the top officials of that company and asked them if they had changed their policies, that certainly this organization would like to be accorded the same courtesies if that was going to be done. I personally called the top officials of the company and asked them if they were aware of the fact that representatives of the A. F. of L. wearing the badge of Laburnum were in the plant signing people into membership. I know the man I talked to said, "We have very good relations with those companies." I usually don't have to call them on things myself between contracts. He said he would check into it immediately. He was trying to explain things to me during the discussion. He said that Laburnum wasn't going to be in there but a very few weeks yet, and they had hoped that the contract would have been finished before it had, and so on. He went into some detail trying, I don't know—He might have thought I was a little vexed at it or what-not, I don't know.

Mr. Mullen: Do you want to look at these cards (handing cards to Plaintiff's counsel)?

Mr. Robertson: I don't object to any of them. I suppose it proves a pattern, Your Honor.

The Court: All right, there is no objection.

Mr. Robertson: I don't object to anything,
 page 1724 } not unless Mr. Bryan objects.

.

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Mr. Mullen: If Your Honor please, I wish to offer as Defendants' Exhibit 32 the application card or acceptance of membership of John—I don't know whether it is Moore or Mooney—can you read it?

The Witness: It is Moore, it looks like, but you would have to check that with the file.

Mr. Mullen: I think it is Moore. I had better ask the witness first what it is.

By Mr. Mullen:

Q. Please state what that is.

A. The card, you mean?

Q. Yes.

A. It is a membership application card in District 50, United Mine Workers of America.

Q. Of John Moore?

A. Yes, of John Moore. It is dated 4/28/48. It says plant area. That is the terminology they use in Hopewell for the Solvay plant. They call it the plant area. Hopewell, Virginia. Employed by Laburnum Construction Corporation, Hopewell. The man who signed it put here "page 1725 } borer" as his classification.

Q. Did you take him and the others—did they join District 50 or UCW?

A. Well, in Hopewell it is all District 50 United Mine Workers there, and I know the representatives probably only had District 50 United Mine Workers' cards on hand when those men were in the office, but we did put them in a United Construction Workers local union.

(The document referred to was marked Defendants' Exhibit 32 and received in evidence.)

Mr. Mullen: I now offer as Defendants' Exhibit No. 33 like application and acceptance of membership identical in form with the one previously introduced, of Thomas Jefferson, dated 4-28-48.

The Court: Are you sure that is '48? Are you sure that is Thomas Jefferson in '48?

Mr. Mullen: Yes, 4-28-48. And designated employed by Laburnum Construction Corporation.

(The document referred to was marked Defendants' Exhibit 33 and received in evidence.)

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Mr. Mullen: Now, Your Honor, we have Washington. James Washington, like request and acceptance of membership, dated April 28, 1948, working at Hopewell, employed by Laburnum Construction Corporation as laborer.

(The document referred to was marked Defendants' Exhibit 34 and received in evidence.)

page 1726 } Mr. Mullen: A like application and acceptance of membership signed by Ashley Robinson, dated April 28, 1948, employed in the Hopewell area by Virginia Mechanical Corporation as laborer. That would be Defendants' Exhibit No. 35.

(The document referred to was marked Defendants' Exhibit 35 and received in evidence.)

Mr. Mullen: As Defendants' Exhibit No. 36 a like membership card signed by Ed Wilson, Jr., dated April 28, 1948, employed by Laburnum Corporation at Hopewell, Virginia as laborer, and showing initiation fee of \$2.00 paid at the time.

(The document referred to was marked Defendants' Exhibit 36 and received in evidence.)

Mr. Mullen: As Exhibit No. 37 a like membership card signed by Joseph Austin, area employed, Hopewell, employed by Laburnum Construction Corporation as laborer, dated April 28, 1948.

(The document referred to was marked Defendants' Exhibit 37 and received in evidence.)

Mr. Mullen: As Exhibit No. 38 a like membership card dated April 28, 1948, signed by Tom McGee, employed by Laburnum Construction Corporation as laborer.

(The document referred to was marked Defendants' Exhibit 38 and received in evidence.)

page 1727 } Mr. Mullen: As Defendants' Exhibit No. 39, a like membership card dated April 28, 1948, signed by George Alexander, employed by Laburnum Corporation as laborer.

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(The document referred to was marked Defendants' Exhibit 39 and received in evidence.)

Mr. Mullen: Defendants' Exhibit No. 40, a like membership card dated April 28, 1948, signed by W. J. Kimbrough, employed by Laburnum Construction Corporation as laborer, initiation fee of \$2.00 paid.

(The document referred to was marked Defendants' Exhibit 40 and received in evidence.)

Mr. Mullen: As Defendants' Exhibit 41, a like membership card dated April 28, 1948, signed by Cornelius Brown, laborer, Laburnum Corporation.

(The document referred to was marked Defendants' Exhibit 41 and received in evidence.)

Mr. Mullen: A like membership card dated April 28, 1948, signed by Jesse Wyche, Hopewell, employed by Laburnum Construction Corporation as laborer, Exhibit No. 42.

(The document referred to was marked Defendants' Exhibit 42 and received in evidence.)

Mr. Mullen: A like card, Defendants' Exhibit No. 43, dated April 30, 1948, signed by Willis C. Washington, employer, Laburnum Construction Corporation, Department, Solvay, initiation fee \$2.00 paid.

page 1728 } (The document referred to was marked Defendants' Exhibit 43 and received in evidence.)

Mr. Mullen: A like card as Defendants' Exhibit 44 signed by Robert H. Cross, employed by Laburnum Construction Corporation, this card bears no date.

(The document referred to was marked Defendants' Exhibit 44 and received in evidence.)

Mr. Mullen: A like card signed by Irving Davis, employed by Laburnum Corporation. It has no date.

(The document referred to was marked Defendants' Exhibit 45 and received in evidence.)

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Mr. Mullen: A like membership card signed by David Jamison, employed by Laburnum Corporation as laborer. It has under date the figure 19. It does not have any month or year, apparently.

(The document referred to was marked Defendants' Exhibit 46 and received in evidence.)

Mr. Mullen: The next is Defendants' Exhibit No. 47, a like membership card signed by Roma Little, laborer. Like the previous card, it has the figure 12 under the date, but no month or year.

(The document referred to was marked Defendants' Exhibit 47 and received in evidence.)

Mr. Mullen: Can you read that?

The Witness: It is John H. Ulentte, it looks like.

Mr. Mullen: John H. Ulentle, employed by page 1729 } Laburnum Corporation and the card has no date.

(The document referred to was marked Defendants' Exhibit 48 and received in evidence.)

Mr. Mullen: Defendants' Exhibit 49, a like membership card signed by Donald Reams, employed by Mechanical Corporation. This card has no date.

(The document referred to was marked Defendants' Exhibit 49 and received in evidence.)

Mr. Mullen: A like membership card, Defendants' Exhibit No. 50, dated October 14, 1948, signed by John Lindsey, employed by Laburnum Corporation as laborer at Hopewell.

(The document referred to was marked Defendants' Exhibit 50 and received in evidence.)

Mr. Mullen: The next is Exhibit No. 51, a like card signed by John H. Stith, dated October 13, employed by Laburnum as laborer.

(The document referred to was marked Defendants' Exhibit 51 and received in evidence.)

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Mr. Mullen: The next card is signed by Chester Barnes, undated, showing payment at the time of signing of initiation fee of \$2.00.

(The document referred to was marked Defendants' Exhibit 52 and received in evidence.)

Mr. Mullen: I had a hard time making out a page 1730 } very simple name. Herman Jones is the next card, employed by Laburnum Corporation, being a like membership card and it is Defendants' Exhibit No. 53. The date is smeared and you can't tell what it is.

(The document referred to was marked Defendants' Exhibit 53 and received in evidence.)

Mr. Mullen: Many of these are signed with pencil.

A like card for Ivey Simpson, employed by Laburnum Construction Corporation, and that is Defendants' Exhibit 54. Under date it has 28, but no month or year.

(The document referred to was marked Defendants' Exhibit 54 and received in evidence.)

Mr. Mullen: The next is a like card dated October 15, for Elias Franklin and El. I don't know what the El stands for, but that is his name, employed by Laburnum. It shows payment of initiation fee of \$2.00 at the time of signing.

(The document referred to was marked Defendants' Exhibit 55 and received in evidence.)

Mr. Mullen: The next is Wesley Lawson, a like membership card, which bears no date, shows payment of initiation fee of \$2.00 at the time of signing.

(The document referred to was marked Defendants' Exhibit 56 and received in evidence.)

Mr. Mullen: A like card for membership, Theodore T. Mitchell, which bears no date.

page 1731 } (The document referred to was marked Defendants' Exhibit 57 and received in evidence.)

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Mr. Mullen: No. 58 is a like membership card signed on October 11, 1948, by James A. Spratley, employed by Laburnum Corporation as laborer at Hopewell, initiation fee of ninety cents paid. I will ask you if that is initiation fee or monthly dues?

The Witness: That isn't either. The man has 90 cents an hour. He might have put that to be what he was being paid because I think that is about what Laburnum was paying then.

(The document referred to was marked Defendants' Exhibit 58 and received in evidence.)

Mr. Mullen: A like membership card dated October 12, 1948, signed by Alex Coleman, employed by Laburnum, laborer, showing initiation fee of \$2.00 paid.

(The document referred to was marked Defendants' Exhibit 59 and received in evidence.)

Mr. Mullen: A like card dated October 11, signed by Jen-
nis Jenkins, dated October 11, laborer, showing initiation fee
of \$2.00 paid.

(The document referred to was marked Defendants' Exhibit 60 and received in evidence.)

Mr. Mullen: The next Exhibit No. 61 is a like card dated
October 11, 1948, signed by John Edmond San-
page 1732 } ders, employed by Laburnum at Hopewell as la-
borer.

(The document referred to was marked Defendants' Exhibit 61 and received in evidence.)

Mr. Mullen: The next is a like card signed by Joseph J. Rodgers, dated October 15, 1948, employed by Laburnum Company at Hopewell, showing initiation fee of \$2.00 paid.

(The document referred to was marked Defendants' Exhibit 62 and received in evidence.)

Mr. Mullen: And the final like card dated October 11, signed by William H. Alexander, Jr., Exhibit No. 63.

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(The document referred to was marked Defendants' Exhibit 63 and received in evidence.)

By Mr. Mullen:

Q. Mr. Fohl, were all of those cards signed before you contacted Mr. Bryan about October 21?

A. Yes, the vast majority of them. There might have been a straggler or two, but the vast majority if not all of them were signed before I contacted Mr. Bryan.

Q. Did some of these men who signed up in April pay dues between then and the time you contacted Mr. Bryan?

A. There were a number who paid dues and initiation, but I can't say for certain that they paid dues regularly or anything, of those who signed in April.

Q. Did you have a meeting with these men as page 1733 } union members?

A. Yes. We had a number of meetings with those people and I personally attended one meeting the afternoon or early evening of the day I talked with Mr. Bryan the first time. That was October 27. There were 20-some men possibly there at that meeting. We were more or less trying to enlighten them and let them know we were trying to do the best we could for them and we were having an additional meeting with Mr. Bryan on November first.

Q. Did you have any further meeting arranged for the laborers?

A. Other than the October 27 meeting which I attended?

Q. Yes.

A. Yes. I know that representative Shuey had a meeting, which we usually do have after we have a meeting with the company, report back to the people we are trying properly to represent. I know we had a meeting that same evening of November first, but I did not attend that particular meeting. Representative Shuey attended that meeting.

Q. You never got any agreement there from Mr. Bryan to negotiate with you as representing these men?

A. As those things go, it just sat up in the air as far as we were concerned, waiting for some positive commitment from Mr. Bryan to do something with us, because only together could we work out anything for those men.

page 1734 } Q. After you found out that the A. F. of L. had gone on the property and signed them up, did you collect any further dues from them?

A. No, as far as I can recollect we didn't, and the whole situation more or less sort of withered on the vine a little.

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Q. You didn't engage in any controversy with the A. F. of L.?

A. No, there was no controversy developed from it.

Q. Did you make any trouble for Mr. Bryan?

A. We did not.

Mr. Mullen: The witness is with you.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Fohl, are you related by blood or marriage to John L. Lewis?

A. Well, I would be pleased and happy to say if I was related by blood. My wife is related to John L. Lewis, yes.

Q. In what way?

A. She is a niece of John L. Lewis.

Q. What was her name before you were married?

A. Bell.

Q. Where did she live?

A. She lived in Indiana, the same as I did
page 1735 } originally. She originally lived in Iowa, I pre-
sume. I didn't know her quite that early.

Q. Are you related by either blood or marriage to Mr. Willard Owens, that young man over there?

A. Not that I know of.

Q. But you are only a nephew by marriage of John L. Lewis?

A. I presume that is what you would call it.

Q. I notice here from the Richmond Telephone Directory a listing in Richmond, "District 50, United Mine Workers of America, 311 West Grace, 7-7592." That is the address and the telephone number of District 50 which you represent here in Richmond?

A. That is correct.

Q. Then I notice in the Richmond Telephone Directory a listing "United Construction Workers, UMWA, 311 West Grace, No. 7-7592." That is the address and the telephone number of the United Construction Workers, UMWA, in Richmond, is it not?

A. Yes, and as I testified I was director for both those organizations here in Richmond.

Q. If I was a member of the United Mine Workers of America and wanted to join the United Construction Workers,

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would you take me in? I mean leaving out personalities, of course (laughter)?

page 1736 } A. We might even take you in, if we could properly and ethically help you out. I don't quite grasp what your question is. If you were what? What was that, if you were a mine worker?

Q. If a person is already a member of the United Mine Workers of America and he wants to join the United Construction Workers of America, also, will you take him in?

A. I don't know how such a thing could ever occur. If a man is working and is a member of the United Mine Workers he wouldn't be working in a plant where we would have the United Construction Workers. If he wanted to move from one of those plants to the other we possibly would transfer him. Between District 50 local unions or between United Construction Workers local unions we would respect him.

Q. Suppose a man is a member of the United Mine Workers of America doing mine work, and he wants to leave that job and go to construction work, would you transfer him over to United Construction Workers?

A. Personally I don't know just how they would handle that because it has never occurred in the area where I am working. I presume they would respect a man who came from the mines. We respect them from many categories.

Q. You would expect them to transfer him without the payment of any initiation fee?

A. Possibly so. I don't know. I have never page 1737 } handled a situation such as this.

Q. How long have you been in this labor work. You said you had been all over this country.

A. Since about 1939. I have never had that particular thing occur, I am saying.

Q. Although you have covered the United States and Canada?

A. That is correct.

Q. Suppose a man is a member of the United Mine Workers and he wants to go into the District 50, say he wants to start work as a construction worker, but he says "I would rather go in District 50," would you transfer him into District 50?

A. Yes, we will transfer him I know with District 50.

Q. What is your title here?

A. Regional Director.

Q. For what region?

A. Region 19.

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Q. Is District 50 a provisional district?

A. It is as far as I know, yes.

Q. That means that John L. Lewis appoints the top man in it, doesn't it?

A. I don't know as far as policy or as far as what they do. I do my work here in my region as I have been delegated to do.

page 1738 } Q. But you don't know what Uncle John does?

A. I don't call Mr. Lewis Uncle John.

Q. Well, you don't know.

Will you tell the jury now that you don't know whether Mr. Lewis appoints the top man in District 50?

A. What was that? Tell them my opinion?

Q. No, I say do you tell this jury that you do not know whether or not John L. Lewis appoints the top man in District 50?

A. Well, I don't know what he is going to do. As far as what has been done, as I understand it, they have been appointed, if that is what you want.

Q. I don't want anything but the fact.

A. Yes.

Q. Do you know whether or not it is a fact that Mr. John L. Lewis has appointed Miss Kathryn Lewis as the money person of the United Construction Workers?

A. I don't know Mr. Lewis did it or whether another officer of the United Mine Workers did it. I just don't know who personally did it. I am not in a capacity to know those things.

Q. What territory does your region cover?

A. Virginia from approximately Lexington and Roanoke, Virginia east, and North Carolina, including possibly High Point, Charlotte, those points east of those locations in North Carolina.

page 1739 } Q. It has included the same territory during all the years you have been here, hasn't it?

A. At one time the North Carolina region during my term here as regional director was placed under a separate region but it was since transferred back under my jurisdiction.

Q. But so far as the Virginia is concerned you have had the same territory under your jurisdiction ever since you have been here?

A. Yes.

Q. So your jurisdiction, then, would include Buchanan County, Virginia?

A. No, that is right on the border. I wouldn't say—You

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will have to refresh my mind just where it is. I imagine that is just north of Roanoke, is that right?

Q. I am asking you.

A. I don't know.

Q. You don't know whether it is in your region or out of it?

A. Buchanan County is not where we do too much work.

Q. You don't know whether it is in your region or not?

A. I don't right at the moment. I don't know all the counties in Virginia.

Mr. Mullen: If Your Honor please, the witness asked him the geographical location of the place he is asking about.

Mr. Robertson: I have the witness on cross examination, Your Honor, and I am questioning him, not the witness questioning me. If he doesn't know, all he has to do is say so.

The Court: The witness said he didn't know.

page 1741 } By Mr. Robertson:

Q. Is Wise County, Virginia, under your jurisdiction?

A. I doubt it.

Q. Do you know?

A. I am quite sure Wise County is not in my jurisdiction.

Q. Do you know whether Norton, Virginia, is within your jurisdiction?

A. It is definitely not within my region.

Q. Do you know whether Grundy, Virginia, is within your region?

A. It is definitely not within my region.

Q. How do you know so definitely about those—let me finish the question.

Mr. Mullen: Let him finish the answer.

By Mr. Robertson:

Q. If I interrupt you, you stop me; and if you interrupt me, I will stop you.

I don't know whether you can explain this, but why have you got such definite information about the towns, but cannot tell us about the counties?

A. We do have a certain number of representatives located in certain areas where they are working. We don't cover all counties. Some of them are agricultural, and we don't do much work in some counties.

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page 1742 } Q. Is Dorchester, Virginia, within your jurisdiction?

A. There again, I am not too familiar with where Dorchester is.

Q. And you are not too familiar with what has happened in Wise and Buchanan Counties within the last four years, are you?

A. I know nothing as to what happened in Wise and Buchanan Counties.

Q. Sir?

A. I know nothing as far as the details. I read a little in the paper of course. Nobody consults with me on those things. It is out of my jurisdiction entirely.

Q. I believe that the slogan of District 50, and also of United Construction Workers, is "Organize the Unorganized," isn't it?

A. We attempt to do it.

Q. I say, isn't that the watchword?

A. It is, I hope, the watchword of all labor.

Q. I mean, some people would say, "Upward and Onward," but you say, "Organize the Unorganized."

A. We attempt to do it, and I think you are correct, it is one of our slogans.

Q. You succeed pretty well, don't you?

A. We try to do the best we can in the proper manner.

page 1743 } Q. At this time we are talking about over in Hopewell, was David Hunter working in the Hopewell area?

A. Yes, David Hunter was working in the Hopewell area as a representative. I mentioned there were three at that time, previously.

Q. I was just asking you about one, at the moment.

A. Yes, sir, he was.

Q. Were you his boss?

A. I was.

Q. Was Harvey J. Robinson working in the Hopewell area at that time?

A. No, he was not.

Q. Was William O. Hart working in the Hopewell area at that time?

A. He was not.

Q. I believe you used the expression that you might have gotten a little vexed with Mr. Bryan and Laburnum incidental to your contacts with him over in the Hopewell area, is that correct?

Robert R. Fohl, Jr.

A. I try never to get vexed, but naturally, I presume I did when I found out what transpired after I held two meetings trying in a peaceful manner to work out a relationship for those workers who desired us.

Q. You didn't get vexed enough to have Uncle John send David Hunter out to Breathitt County, Kentucky, and see if he couldn't bring Bryan around and make Bryan page 1744 } and Laburnum see the light, did you?

A. I didn't grasp all of that. Did what, now? Did I get David Hunter from where?

Q. I say, you didn't see to it that David Hunter got sent to Breathitt County, Kentucky, after you heard Laburnum was working out there, so he could make them come around and see the light, did you?

A. The first I knew of any occurrence in Breathitt County was when some process server came to my office and gave me some papers. I felt like calling Dave Hunter up, maybe.

Q. You have the utmost confidence in David Hunter?

A. Mr. Hunter is a mighty fine man.

Q. And any report that he made, you would accept it as being a conscientious and correct report?

A. I presume I would, considering the man, as I do all the men that have worked for me, mighty good men.

Q. How long do you keep your office records?

A. It depends on what type of records they are. Usually our records, to keep from cluttering the files up, we keep maybe half a year.

Q. But you keep these applications for membership several years, don't you?

A. We do, because many times we are unsuccessful in organizing a plant at first, and we possibly renew the organization campaign later.

page 1745 } Q. Now, I am referring to memorandums that Mr. Bryan made at the time, and this might refresh your memory a little. It might get the dates a little more accurately, although I don't think it makes very much difference.

When is the first time that you contacted Mr. Bryan? On October 21, 1948, wasn't it?

A. It could have been. I haven't been able to refresh my recollection positively on that date, but I would say that is correct.

Q. That was concerning the work he was doing for the Utilities Engineering and Construction Company and the Coastal Stevedoring Company there in Hopewell, wasn't it?

Robert R. Fohl, Jr.

A. I don't know, and I didn't discuss with Mr. Bryan who he was working for or who he had his contracts with. I assumed it was Solvay Process.

Q. You didn't discuss at any time the particular job he was on?

A. Oh, yes, I discussed it with Mr. Bryan, as I have testified.

Q. You mentioned Mr. Joinville here in Richmond.

A. Yes.

Q. Do you know him fairly well?

A. I do not.

Q. Do you know him by reputation?

A. The only association I had with Mr. Joinville is what came up on this Laburnum situation.

Q. I say, you know him by reputation?

A. And very little about that.

Q. Would you be willing to state whether or not you know his reputation for truth and veracity in Richmond is good or bad?

A. I hope I could say it was good, but I really don't know the man too well to make too many commitments at all.

Q. So far as you know, then, it is good?

A. So far as I know, it is, yes.

Q. I am going to ask you if your next contact—was that first contact by telephone or face-to-face?

A. It was by telephone.

Q. And the purpose of that was to make an appointment?

A. That is right.

Q. Then wasn't your next contact with him on October 26, 1948, which would have been just five days later?

A. I don't know. I could ask you a question, but—

Q. You went then to the Laburnum office?

A. On two occasions I went to Mr. Bryan's office.

Q. I mean, you had only two contacts with him during that time?

A. Yes, the telephone conversation and two times that we went to his office.

Q. I believe that the first contact by telephone was on October 21, 1948; and then you went to his office on October 26, 1948; and then you went back to his office on November 1, 1948, didn't you?

A. As I recollect it, it was October 27 and November 1. There could be an error there.

Q. All right. On that last time you went to see him, which,

Robert R. Fohl, Jr.

according to the memorandum here, was November 1, 1948, you told him that you had 20 of his laborers already signed up to join District 50, didn't you?

A. We normally, unless we can reach some workable way to handle recognition, don't divulge the total amount or names, either. I can't say whether I did or didn't. Normally we don't do it. I can say that. I did tell him we had a majority signed up. That is the way we usually handle it.

Q. He told you he would investigate it, didn't he?

A. Yes.

Q. To check what you said?

A. Yes, he assured us he would check into the whole matter, as far as I can remember.

Q. And he advised you subsequently that he had checked into it, and your claim was false, didn't he?

A. I don't recollect that, and I don't know how he could, not knowing the number nor the names.

Q. I say, he told you afterwards that he had checked into it, and that your claim that you had 20 people page 1748 } signed up was false, according to his information, didn't he?

A. No, sir, I never remember any such statement of any positive nature from Mr. Bryan.

Q. I will ask you if you deny that Mr. Bryan advised you afterwards that he had investigated your claim and had ascertained to his satisfaction that your claim that you had a majority of his laborers signed up in Hopewell was false?

A. I will definitely say he didn't make any positive statement in that regard, whatsoever.

Q. Was it false or was it true?

A. It was false, as far as I know, if you are saying he said that.

Q. You did have a majority signed up when you talked to him?

A. We assumed we had a majority, from what we could gather from the men that we were working with there the people who were working for Mr. Bryan.

Q. Do you mean you don't know whether you had a majority or not?

A. We never progressed to the point with Mr. Bryan where he would divulge the total number of workers, or anything else, to us. I don't know from facts on his payroll. He wouldn't tell us, or didn't.

Q. I am just going to ask you to answer the question that

Robert R. Fohl, Jr.

I ask you: I say, at the time you talked to
page 1749 } Mr. Bryan and claimed you had a majority of
his laborers signed up at Hopewell, do you your-
self know whether you did or whether you didn't?

A. We are quite positive that we did, talking to the workers
at the plant, who should know.

Q. So, based on what the workers told you, you think you
had a majority?

A. We were pretty certain we did.

Q. Pretty certain?

A. Yes, sir.

Q. That is as far as you can go, under oath here?

A. I wouldn't want to say anything positively if I didn't
know. We gathered it from the workers, who should know.

Q. At your last meeting with Mr. Bryan in the offices of the
Laburnum Company, Mr. Joinville was present, wasn't he?

A. Yes, he was.

Q. You and he left the meeting together, didn't you?

A. After the meeting broke up, we went down the stairs to-
gether; also with Representative Shuey, the three of us.

Q. And Mr. Bryan was not there, was he?

A. It was his office.

Q. I say, after you left his office and went downstairs.

A. He didn't leave the office at the same time,
page 1750 } no.

Q. When you got down there, Joinville told
you for you all to lay off the construction workers, and the
A. F. of L. would lay off the maintenance work, didn't he?

A. Well, we are happy to talk with anybody to try to settle
all of these problems. He might have said that. I imagine
he would want us to do that.

Q. I wish you would answer the question, please, because
we could move along so much quicker.

A. I don't know exactly what went on. I didn't keep a
record or notes of what Mr. Joinville said.

Q. Of course you didn't. I will ask you whether you can
just answer this in a direct way, one way or the other:

After you left that third meeting in the Laburnum offices
and went downstairs, didn't Joinville say to you, "You lay
off the construction work, and we will lay off the maintenance
work," and you agreed to that proposition, and that was the
last Mr. Bryan ever heard from you?

A. I can say as far as my agreeing to it, you are just ab-

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solutely wrong; and whether it was discussed or not, I can't say for certain.

Q. But you never had any contact with Mr. Bryan after that date, did you?

A. No, not with Mr. Bryan.

Q. And you never ran him off the job in Hope-page 1751 } well, did you?

A. We certainly did not.

Q. And you never thought it was of enough importance to go back to him and bring the thing to issue one way or the other, after that third meeting?

A. After I talked with Solvay and they more or less said that that contract of his would be done within a few weeks, I did not go back to him.

Q. Why didn't you?

A. A situation like that, and the way it was handled, could cause difficulties there. That Solvay plant, 1,000 or 1,200 of our members in there, we just take our time a little slower when we are prodded by a situation like we were prodded by there.

Q. As the Bible says, you would wait until a more appropriate season?

A. I certainly wasn't waiting for any appropriate season.

Q. But you weren't acting during that season, were you?

A. I hope at all times that we can have good relations, and I always have faith in anyone, even Mr. Bryan.

Mr. Robertson: Stand aside.

The Witness: Thank you.

The Court: Any further questions, gentlemen?

Mr. Mullen: I was going to ask him a few page 1752 } questions. Maybe we had better recess.

The Court: Recess for lunch. Be back at 2:15, gentlemen.

(Whereupon, at 1:00 o'clock p. m., the Court recessed until 2:15 o'clock p. m., of the same day.)

2:15 p. m.

Whereupon,

ROBERT B. FOHL, JR.

the witness on the stand at time of recess, resumed the stand and testified further as follows:

RE-DIRECT EXAMINATION.

By Mr. Mullen:

Q. Mr. Fohl, whom did you state you were employed by?

A. District 50, United Mine Workers of America.

Q. You also serve the United Construction Workers?

A. Yes, sir; I do.

Q. Do you get any instructions from the United Mine Workers?

A. I do not, no.

Q. Are you connected with the United Mine Workers in any way?

A. In no way whatsoever.

Q. All of your instructions come from what source?

A. I take my instructions directly from Mr. A. D. Lewis, who is Chairman of the Organizing Committee of District 50 and also director of the United Construction Workers.

Mr. Mullen: That is all.

RE-CROSS EXAMINATION.

By Mr. Robertson:

Q. If you had a majority of the laborers
page 1754 } signed up at Hopewell, why didn't you start a
proceeding before the National Labor Relations
Board for a certification proceeding—

Colonel Harris: We object to that.

Mr. Robertson: —on the election. I hadn't quite finished the question, please.

The Court: Don't answer the question, Mr. Fohl, until counsel finishes it and Mr. Harris has had an opportunity to make a statement in regard to it.

By Mr. Robertson:

Q. I say if you had a majority of the laborers signed up at

Robert R. Fohl, Jr.

Hopewell why didn't you start a proceeding before the National Labor Relations Board for an election so that your people could be certified as the bargaining agent?

Colonel Harris: We object to it as immaterial and irrelevant and incompetent and argumentative.

Mr. Robertson: If Your Honor please, they have put in a lot of grounds of defense here. They have tried to inject questions in here and I think they have made it relevant by their own action, but if they want it all out, it is all right with me.

The Court: Do you withdraw the question?

Mr. Robertson: No, I ask the Court to rule on the question.

The Court: The Court will allow the question page 1755 } for what it is worth.

Colonel Harris: We reserve an exception.

Mr. Robertson: Repeat the question, please, Mr. Reporter.

(The pending question was read by the reporter.)

The Witness: That is not a question for a yes or no answer. If I may go ahead: To begin with, Mr. Bryan at no time ever suggested any manner in which we could gain recognition. That is No. 1. Not even as you have asked why we didn't. Secondly, there are a number of ways you can gain recognition, and the one you state is only one of them. We have gained recognition with companies such as the Koppers Company here in Richmond, the Hyman Veiner & Sons and many others, since the Taft-Hartley Act was instituted through the Virginia State Labor Department and through private elections and through the Federal Mediation and Conciliation Service of the United States Government. In many ways we have gained recognition. You ask us why we didn't take the one course. I can't tell you why we didn't. One reason, of course, is that the United Mine Workers does not deal with, since the Taft-Hartley Act, handle any cases through the facilities of the National Labor Relations Board, for I think obvious reasons, on principle. We are an organization that at least tries to adhere to a certain amount of principle.

We think the principles of that law are wrong, page 1756 } and we have stuck to that. But there are many other ways other than the one you stated that recognition procedures can be worked out, and we were willing, and I presume even the National Labor Relations Act

Oscar Wireman.

the only purpose that Mr. Bryan or we either would want to know is if a majority of those people wanted our organization to bargain for them, and there is plenty of facilities to determine that. We were ready and able to prove that.

By Mr. Robertson:

Q. And another reason is that John L. Lewis wouldn't sign the anti-communist act and you had no standing before the Labor Relations Board, isn't it?

Colonel Harris: We object to that as prejudicial, irrelevant, illegal, immaterial and incompetent.

Mr. Robertson: I think it is entirely material after the harangue the witness has given.

The Court: I will sustain the objection.

Mr. Robertson: No further questions.

Mr. Mullen: Stand aside.

(Witness excused.)

Mr. Mullen: Call Mr. Oscar Wireman.

Whereupon,

OSCAR WIREMAN

called as a witness in behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

page 1757 } **DIRECT EXAMINATION.**

By Mr. Mullen:

Q. Mr. Wireman, what is your full name?

A. Oscar Wireman.

Q. How old are you?

A. Thirty-nine years old, on July 12.

Q. Where do you live?

A. Magoffin County.

Q. What is your present job?

A. Working on a tippie.

Q. What kind of work at the tippie?

A. I am boom man.

Q. Is that for the Pond Creek Pocahontas Company?

A. Yes, sir.

Q. Are you a member of any union?

A. Yes, sir; United Mine Workers.

Oscar Wireman.

Q. Did you ever work for Laburnum?

A. Yes, sir; I did.

Q. When?

A. I worked through part of 1948 and part of 1949, until the tippie started the 10th day of June.

Q. How did you happen to be working for Laburnum?

A. Well, Mr. Haslam was supervisor in there, and he just loaned me over to Laburnum Construction Company when they came in there.

page 1758 } Q. Mr. Haslam was supervisor for whom?

A. For the coal company.

Q. He loaned you to Laburnum?

A. Yes, sir.

Q. When did you go back to Pond Creek Pocahontas Company?

A. I went back June 10 when the tippie started.

Q. That is when the tippie started shipping coal?

A. June 10, 1949, yes, sir.

Q. Do you know Mr. Delinger?

A. I met him a few times.

Q. Did you tell him that you were sorry to leave Laburnum?

A. No, sir; I never told nobody I was sorry to leave because I knew I was going to get more money when I went for the United Mine Workers, and have more protection.

Q. You were getting how much working for Laburnum?

A. I was getting 90 cents an hour. When I went on the tippie I was drawing \$1.75 and four-tenths.

Q. You were working for Mr. Bryan as a laborer or what?

A. I was working as a laborer.

Q. What do you do on the tippie?

A. I am a boom man. I load coal, they call it.

Q. Were you there on the tippie on July 26?

A. I was cleaning gonds at that time on the page 1759 } railroad.

Q. Where were you cleaning those?

A. What?

Q. Whereabouts were you cleaning those? Where were you located?

A. Just up above the tippie just a little ways.

Q. Did you see a group of men come there with Mr. Hart?

A. No, sir. I didn't see no group of men.

Q. Did you see the group when they gathered near the tippie from where you were?

A. I never saw no group of men whatever, only the working men, those working there for Laburnum.

Oscar Wireman.

Q. The working people for Laburnum?

A. Yes, sir.

Q. Did you see any violence take place down there where they were?

A. No, sir; I never seed no violence.

Q. Did you hear any shots?

A. I never heerd no shots.

Q. Did Mr. Hart tell you who he was there to organize?

A. Yes, sir. He said he was there to organize Laburnum Construction Company laborers.

Mr. Mullen: The witness is with you.

page 1760 } CROSS EXAMINATION.

By Mr. Robertson:

Q. How old are you, did you say?

A. I was born July 12, 1912. I will be 39 years old this July coming.

Q. Where do you live?

A. I live in Magoffin County.

Q. How far from the Laburnum job site?

A. About four miles.

Q. On July 26, which would be a Tuesday, the day that Hart came there, you were not working up in the tipple, were you?

A. No, sir. I was down on the ground, on the railroad cleaning gonds. I never do work up in the tipple none nohow. I work under the tipple.

Q. But you know how the tipple is built?

A. Yes, sir, I do.

Q. How far would you say where the coal comes in to the tipple is above the ground?

A. Above the ground?

Q. Yes.

A. It is about 18 feet, and it comes down a chute. You mean the button line?

Q. Yes, I mean the button line brings the coal down to the tipple. From the point where it first reaches the

page 1761 } tipple how far is that above the ground?

A. 18—Well, I suspect it is about 45 or 50 feet.

Q. Are there some men working up there where the coal comes in?

A. The men works, yes, at the table, the slate pickers they

Oscar Wireman.

call it, where the coal comes off the button line on to the table.

Q. Then are there some more men who work down lower near the ground?

A. Yes, the boom man who loads the coal works on the platforms on the ground, what you might fall on the ground.

Q. What would you say the biggest chunks of coal that come in the tippie there before they have been broken up would be? Would you indicate it with your hands?

A. Well, I couldn't say for sure because they break them up up in the tippie before they come down to where we are, and they are run through the churner.

Q. But when they come into the tippie how big are they?

A. The biggest ones I ever seed was about 3-foot one way and maybe about 20 inches another.

Q. If I was working up there where it came in and Mr. Mullen was working down toward the ground, I could drop one of those chunks down on his head, couldn't I?

A. What is this floor and stuff here for but to
page 1762 } catch that if it falls?

Q. I say if he was down below there and I didn't like him I could just tip one of those over on him, couldn't I?

A. No, you couldn't, because there is a floor there to catch it.

Q. It would catch it?

A. There is a floor there. If it was to come off the shaker, there is a floor to catch it, and it can't go down any lower.

Q. So it wouldn't be possible to hit him?

A. No, sir; it wouldn't hit him without you was to get out on one of them booms and throw it off on him.

Q. Suppose I had it in for him and wanted to hit him, could I do that?

A. If you did, you might hit him some way or other. If I wanted to hit a man I would manage to hit him some way or another.

Q. Are you a pretty good shot?

A. Well, I have been known to kill a few rabbits, a few squirrels.

Q. If Mr. Mullen was on the tippie and you were out in the woods and wanted to take a crack at him, do you think you could hit him?

A. I don't want to do that.

Q. But if you got mad enough to try it?

page 1763 } A. My desire is not to hurt any man what-ever.

James H. Salyer.

Q. If you got mad enough.

A. I don't get mad enough.

Mr. Robertson: All right, Mr. Wireman.

The Court: Gentlemen, excuse me about two or three minutes, will you. I have to make a telephone call.

.(Brief recess.)

Whereupon,

JAMES H. SALYER
called as a witness in behalf of Defendants, having been first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. What is your full name, please?

A. James H. Salyer.

Q. How old are you?

A. I am 32.

Q. Where do you live?

A. I live in Salyersville, Kentucky.

Q. Were you living there in July, 1949?

A. Yes, sir; I was.

Q. Are you a member of a union?

A. Yes, sir; I am.

Q. What union?

A. I am a member of the A. F. of L.
page 1764 } Q. What local union?

A. I am in 697—no, at the present time I belong to the Ann Arbor Local in Ann Harbor, Michigan.

Q. Were you a member of the Salyersville Local in 1949?

A. Yes, sir; I was.

Q. Did you hold any office in it?

A. Yes, sir; I was financial secretary.

Q. Did Mr. Robert Poe turn in to the union office any signed card by laborers of Laburnum after you had joined the Salyersville Carpenters Union in 1949?

A. No, sir; as far as I know he did not.

Q. They would be the official records of the office there, wouldn't they?

A. Yes, sir; they should be the official record of the office.

James H. Salyer.

Q. Did you furnish him any papers to be used in that connection?

A. Yes, sir; I did. I furnished him receipts to take—I mean for the purpose of obtaining those applications.

Q. The receipts were for any money they would pay when the application was taken?

A. That is right.

Q. Did he ever bring any back to you?

A. No, sir; as far as I know he never brought page 1765 } any back.

Q. You were the treasurer at that time?

A. No, sir; I wasn't the treasurer. I was financial secretary.

Q. Did Mr. Delinger live at Salyersville while he was superintendent of the job there?

A. Yes, sir; it is my understanding that he did live in Salyersville.

Q. Did the Salyersville Union make any effort to get a contract with Laburnum Carpenters for the work there at Evanston?

A. Yes, sir. We sent out a delegation, I would say on several occasions to contact Mr. Delinger and other officials of the company to try to obtain that contract.

Q. Did you know when the contract they had with the Paintsville Union was going to end?

A. Yes, sir, we had been told that that contract was about to end and that a new contract was to be let.

Q. Did you get any satisfaction from Mr. Delinger?

A. No, sir; no satisfaction whatsoever.

Q. Did any one express any regret at seeing him leave?

A. Well, yes, sir. I mean no regret. I meant it was the general opinion there that most of the people were rather glad to see him leave because we felt like we should have at least some work there.

Mr. Mullen: The witness is with you.

page 1766 } CROSS EXAMINATION.

By Mr. Robertson:

Q. Are you a member of the United Mine Workers?

A. No, sir; I am not.

Q. Have you ever been?

A. No, sir; I have not.

James H. Salyer.

Q. Is that why you left eastern Kentucky to go out to Michigan so you could get a job?

A. No, sir. I am working for the United Mine Workers at this time, but I have an application to become a member but as yet that hasn't come through.

Q. You have an application in and you are going to jine?

A. I think so.

Q. Why?

A. I find the fellows are nice to work for. I have worked near them and I have worked for them, and I find they treat you nice.

Q. It makes pleasanter working conditions in eastern Kentucky, too?

A. Yes, sir; so far I have found the conditions very pleasant.

Q. When you work in eastern Kentucky as a member of the United Mine Workers?

A. Would you repeat that for me, please?
page 1767 }

Q. I say, if you are a member of the United Mine Workers it makes it pleasanter to work in eastern Kentucky, doesn't it?

A. Well, sir, I have worked in eastern Kentucky before. In fact, I have worked there most of my life. I haven't worked for the United Mine Workers before I would say a year ago, and I have always found conditions pleasant to work in eastern Kentucky.

Q. But I am asking you this: Aren't they more pleasant to work in eastern Kentucky if you belong to the United Mine Workers?

A. No, sir; I haven't found that to be true.

Q. You have not?

A. I have not found that to be true.

Q. Which is stronger in eastern Kentucky, say around Salversville, would you say the A. F. of L. or the United Mine Workers?

A. I would say the United Mine Workers were.

page 1768 }

LEE ALLEN

a witness in behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Colonel Harris: .

Q. Are you Mr. Lee Allen?

A. Yes, sir.

Q. How old are you, Mr. Allen?

A. Thirty-eight.

Q. Where were you born and raised?

A. Breathitt County, Kentucky.

Q. Who do you work for now?

A. Pond Creek Coal Company.

Q. What kind of work are you doing?

A. Driving diesel motors.

Q. Are you a member of any union now?

A. Yes, sir.

Q. What union do you belong to now?

A. United Mine Workers.

Q. How long have you been a member of the United Mine Workers?

A. About two years.

Q. Were you at the tippie of the Pond Creek Pocahontas Coal Company on the morning of July 26, 1949, page 1769 } when Laburnum Construction Corporation was doing work on the tippie?

A. Yes, sir.

Q. What was the occasion for your going there?

A. I was looking for work.

Q. While you were there did you see any men who were not at work approach the job site? Did any men who were not working on the job come up to the job site?

A. Yes, sir.

Q. How many would you say were in the group that you saw?

A. There were around 50 or 60.

Q. Did you see anything out of the ordinary on that occasion?

A. No, sir; I did not.

Q. Did you hear any loud talk?

A. No, sir.

Q. Did you see any guns?

A. No, sir.

Q. Did you see any drunks?

Lee Allen.

A. I did not.

Q. Did you see any knives?

A. No, sir; I didn't.

Q. Did you hear any talk from the laborers on that occasion?

A. No, sir; not as I remember of.

Q. Did you know any of those men that were
page 1770 } in that group that you said had about 50 or 60
men in it?

A. Yes, sir; I did.

Q. Were they people from that general neighborhood?

A. Yes, sir.

Q. Did you hear the men that came or any of them talking
to laborers who worked on the Laburnum job?

A. How was that?

Q. Did you hear any conversation between any of these
men that came up to the job and men who were already at
work on the job?

A. Yes, sir; I heard them talking some.

Q. Did you see them talk to any laborers?

A. No, sir; I didn't.

Q. Did you hear them tell anybody they had better sign,
or words to that effect?

A. No, sir.

Q. How long did you stay there that day?

A. I stayed pretty well all day.

Q. Did you get to see Laburnum or anybody at the Laburnum
office and talk to them about getting a job?

A. No, sir; I didn't talk to them any.

Q. Did you go back the next day to the job site?

A. Yes, sir; I did.

Q. Did you talk to anybody on that occasion?
page 1771 } A. Well, I talked to some gentleman there. I
asked about a job. I asked him what he was

paying, and he said he was paying 90 cents an hour, and I
just refused to go to work. He asked me to go to work.

Q. Did you see any picket sign that day?

A. Yes, sir; I did.

Q. Were there any other men standing around when you
were talking about working for 90 cents an hour?

A. Yes, sir; there was a bunch of us there in the road in
front of the office.

Q. Did any of them agree to go back to work or to go to
work either one for 90 cents an hour?

A. No, sir; they refused to go to work.

Lee Allen.

Q. Did you hear any laborer tell Mr. Bryan or you or anybody else that he signed the card because he was scared?

A. No, sir; I did not.

Q. Did you sign up?

A. Yes, sir; I did.

Q. Were you scared?

A. No, sir.

Q. When you went there the first time to get a job with them were you trying to get a job from the Pond Creek Pocahontas Coal Company or from the Laburnum Construction Corporation?

A. Pond Creek Coal Company
page 1772 } Q. Was it Laburnum Construction Company
folks who offered you 90 cents an hour or Pond
Creek Pocahontas Company?

A. Laburnum Construction.

Colonel Harris: You can take him.

CROSS EXAMINATION.

By Mr. Robertson:

Q. What part of Breathitt County do you live in?

A. What part of Breathitt County?

Q. Yes.

A. It is the eastern part, I guess.

Q. What is it called, your place?

A. What do they call it?

Q. Yes.

A. Breathitt County.

Q. I mean the place where you live.

A. My post office is Lambric.

Q. How big a place is that?

A. It is just out in the country there.

Q. How far do you live from the job site of Laburnum?

A. Ten miles.

Q. Why do they call Breathitt County "Bloody Breathitt"?

A. I couldn't say whether it goes by that name or not.

Q. You don't know whether it goes by that name?

A. No, sir.

page 1773 } Q. When did you join the United Mine Workers?

A. A couple of years, two years.

Q. Did you already belong to them when you went out there on July 26?

Lee Bach.

A. No, sir.

Q. What did you belong to then?

A. I didn't belong to any organization, no union.

Q. Are you a pretty good shot?

A. Well, not so good.

Q. How good?

A. I could kill a squirrel, I guess, if you gave me a shot-gun.

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LEE BACH

called as a witness for the Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Mr. Bach, what is your full name?

A. Lee Bach.

page 1774 } Q. How old are you?

A. Fifty-four.

Q. Where do you live?

A. Breathitt County.

Q. Whereabouts in Breathitt County?

A. Noctor is my address, about eight miles out from the county seat.

Q. Were you born in Breathitt County?

A. That is right.

Q. Lived there all your life?

A. I have.

Q. Are you a member of any union?

A. Yes, sir.

Q. What is it?

A. United Mine Workers.

Q. How long have you been a member of the United Mine Workers?

A. Oh, approximately a year or a little over.

Q. Where are you working now?

A. For Pond Creek Pocahontas Company in Spring Fork, Lambrie I believe is the post office.

Q. Were you working for Laburnum Construction Corporation in July, 1949?

A. I was.

Supreme Court of Appeals of Virginia

Lee Bach.

pages 1775-79 } Q. What was your job with them?
A. Labor foreman.
Q. You were the foreman in charge of the laborers?

A. That is right.

Q. That is the unskilled labor, you mean?

A. Yes, sir.

Q. Were they organized in any union at that time?

A. They wasn't, no, sir.

Q. Do you know Mr. Hart?

A. I do.

Q. Did you talk to Mr. Hart or Mr. Robinson at any time in the summer of 1949?

A. I did.

Q. Do you know about what time?

A. No, I can't state what time.

Q. Do you know whether was in July or August?

A. It was in July, but I don't remember the date.

Q. Early or late in July?

A. I would say somewhere near the middle of July, around the 12th or 15th, something like that.

Q. Did you talk with him then about organizing laborers?

A. I did; Mr. Hart.

Q. Was anybody else with you when you talked to him?

A. I don't remember if there were.

Q. Did he at that time ask you to join the page 1780 } United Construction Workers?

A. I can't say he asked us to, but he gave me some cards, you might say cards or memberships, something pertaining to that.

Q. Did you sign one of them?

A. I did.

Q. Did you sign that card of your own free will or were you forced to sign it?

A. My own free will.

Q. Had there been any movement among the common laborers at that time to seek membership in some union?

A. There had.

Q. After you signed that card, later on Mr. Robert Poe had you all sign some cards for the American Federation, the Salyersville Union?

A. That is right.

Mr. Robertson: It is all right to lead him.

Mr. Mullen: Do you want to give me lessons?

Lee Bach.

Mr. Robertson: I just said it was all right. I don't think you need any.

Mr. Mullen: Thank you.

By Mr. Mullen:

Q. Did you hear anything further from Mr. Pee about going into the Salyersville Union?

A. I did not.

page 1781 } Q. Were you working on Tuesday, July 26, 1949?

A. I was.

Q. At what point were you working?

A. At the tippie. We call it the No. 1 tippie, the one that was under construction at that time.

Q. What work were you doing there?

A. In charge of the laborers.

Q. Did any men come there at that time who were not working on the job during the day?

A. They did.

Q. With whom were they when they came there?

A. When 11:30 came I and others were around in below the tippie to have lunch. It was a very hot day and there was some shade down around the box cars. When we had finished our lunch we came back and when we came back around there at the side of the tippie were those men.

Q. Did you go in the toolhouse where they had some conversation?

A. No, I didn't.

Q. How many men would you say there were in that group that came in there?

A. In just a rough estimation I would say 20 or 25.

Q. Nothing like 100?

A. No, indeed there wasn't.

page 1782 } Q. Did any of those men seem to be drunk?

A. No, they didn't.

Q. Did you see any guns?

A. No, I didn't.

Q. Did you see any outlines of guns under the men's shirts?

A. I did not.

Q. Did you hear any shooting?

A. No, sir; not that day.

Q. Did you see them—

Mr. Robertson: Excuse me. He said not that day.

Lee Bach.

The Witness: I could hear shooting any time as far as that goes.

Mr. Mullen: May I go on now?

By Mr. Mullen:

Q. Were they signing up any of the employees of Labor-
num at that time, the morning of the 26th?

A. Yes, some signed up.

Q. Did you see whether they were signing willingly or be-
ing forced to sign?

A. They all seemed to be perfectly willing.

Q. The men knew they were coming over there to sign them
up, didn't they?

A. I knew they were coming.

Q. Did you or not sign a second time?

A. I did.

page 1783 } Q. Did they set up a picket sign that day or
not?

A. When we came back from having lunch, the best I re-
member, here next to the step that goes up in the tipple was
something like a piece of paper with a picket sign on it. It
was stationed there when I came back from having lunch.

Q. Did you hear any or see any effort to sign anybody
else besides the laborers?

A. No, I didn't.

Q. How long did you stay around there?

A. I would say it wouldn't exceed two hours that I stayed
there and probably not that long.

Q. After the men left did you have any talk with Mr. Delin-
ger?

A. I did.

Q. What did you do?

A. After the men left—in the afternoon we didn't work any,
and as usual I made out their time card or sheet, which I
had been doing at the end of the period of the day, but at
that time at noon there wasn't any other work and I made
out the time sheet and took it over to the office and presented
it to him.

Q. What did he say to you?

A. He said he already had their time.

Q. Did he make any inquiry as to what you had done during
the day?

page 1784 } A. He did.

Q. What did he ask you?

A. He asked me if I signed those papers, and I answered

Lee Bach.

him I did. So his reply was "Well, I guess you have a right to sign what you want to," and I answered, "I think I do." That was the last time I seen Mr. Delinger.

Q. Did he say anything more to you when he told you you had a right to sign?

A. No, that is all he said.

Q. Did you go back there the next day, the 27th?

A. I did, the next morning.

Q. Were any of the laborers over there?

A. I am not sure. It appears to me that there were one or two, but I wouldn't be positive of that.

Q. Did you have any conversation with any of the Laburnum officials that second morning?

A. Well, yes.

Q. With whom did you talk?

A. A man that was directed to me to be Mr. Bryan. That was the first time I had seen him, and that is who I was informed was Mr. Bryan. The timekeeper, Mr. Riggs, offered me my time in full, and Mr. Robinson asked me not to take it, but just to take what was due me.

Q. Did Mr. Bryan say anything to you?

A. No more than asked me if I wanted to go to work.

Q. What did you tell him?

page 1785 } A. I replied no.

Q. Was there any discussion between you and Mr. Bryan about the picket line?

A. No, he never mentioned it to me.

Q. Did you give Mr. Bryan any reason why you wouldn't go to work?

A. I did.

Q. What was the reason you gave him?

A. That I honored the picket line. I wouldn't cross for it.

Q. Was there a picket line there that day?

A. A picket sign was up.

Q. Did you hear any threats made that morning?

A. No, I did not.

Q. Were you or not afraid to go to work?

A. No, sir; I was not.

Q. You gave Mr. Bryan your reason that you wouldn't go to work. I believe you stated it.

A. That is right.

Mr. Mullen: The witness is with you.

Lee Bach.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Bach, which union is stronger in eastern Kentucky, the A. F. of L. or the United Mine Workers?
page 1786 }

A. I just belong to the United Mine Workers. I can't say about the A. F. of L.

Q. You wouldn't say which one is stronger?

A. No, sir.

Q. When did you join the United Mine Workers?

A. It was three weeks, approximately four, after this happened that I went back to work for Pond Creek Pocahontas Coal Company, and then I joined the United Mine Workers union then. That was in 1949, somewhere along about August or September.

Q. You had never belonged to any union before that?

A. Not there, no, sir.

Q. Why did you happen to join up at that time?

A. As early as I could get in it. I went back to work for Pond Creek Pocahontas then and they were operating under the United Mine Workers Union.

Q. You couldn't go back to work there unless you did join up, could you?

A. I don't know. I didn't ask any questions to know about that, so I don't know.

Q. It is pleasanter to work in Eastern Kentucky if you belong to the United Mine Workers, isn't it?

A. How is that?

Q. I say it is pleasanter to work in eastern Kentucky if you belong to the United Mine Workers, isn't it?
page 1787 }

A. I can't say exactly pleasant, but if you are a miner more than likely you are going to belong to it.

Q. Why?

A. Well, it calls for it.

Q. Sir?

A. I don't know. On that work they present check-off slips to me which I was glad to sign to belong to it as long as I was producing coal.

Q. You wouldn't want to buck them, would you?

Colonel Harris: We object to that.

Mr. Robertson: I think it is a legitimate question. If you stay in eastern Kentucky and want to work out there you have to jine up. That is what I am trying to develop.

Lee Bach.

Colonel Harris: We object.

The Court: I will allow it for what it is worth.

Colonel Harris: We reserve an exception.

By Mr. Robertson:

Q. If you want to go to work in eastern Kentucky you pretty well have to jine up, don't you?

Colonel Harris: Same objection and exception.

The Court: Same ruling. Answer the question.

Mr. Pollard: Exception.

By Mr. Robertson:

Q. I don't want to embarrass you, Mr. Bach.

A. That is all right.

page 1788 } The Court: Read the question.

(The pending question was read by the reporter.)

The Witness: No, sir.

Mr. Mullen: That wasn't the question.

By Mr. Robertson:

Q. I didn't think that was the question I asked.

A. I can't answer that question, I don't know whether you do or not, but I joined willingly. I can't say whether you have to join or whether you have not.

Q. At the time you signed up out there when Hart was there you had already signed up to join the A. F. of L., hadn't you?

A. I can't say which I signed first, sir. I am not positive of that.

Q. You were going to sign them both?

A. I was trying to get something (laughter). Let's just pass that for a joke.

Q. I am speaking seriously. Just between you and me, you were going to join both and play safe, weren't you?

A. No, sir. After I thought I wanted in the United Construction Workers because when that work was over I figured I could transfer over to the United Mine Workers and still work at home and be with my family.

Q. And if you didn't join up with them you couldn't work there close to home?

page 1789 } A. I don't know whether I could or couldn't.

Q. You didn't care to raise the question?

Lee Bach.

A. I didn't inquire into that.

Q. You didn't care to raise the question?

A. No, sir.

Q. You knew Mr. Delinger out there, the Laburnum superintendent on the job?

A. I know him, yes, sir.

Q. Do you remember ever telling him that you wanted to join up with the A. F. of L. real quick before the United Construction Workers people began to put the heat on you?

A. No, sir; that is not right.

Q. That is not right?

A. No, sir.

Q. What did you tell him.

A. The only word he said to me, he said, "It is all right to join it," and I said it is a yes or no. He said "You can tell your men it is all right to join." That is as far as we ever discussed the matter.

Q. But you did join them both?

A. That is right, I did sign it. I will admit that.

Q. Why do they call Breathitt County "Bloody Breathitt"?

A. I don't know, it just has the kind of wrong name. People go to church and Sunday school there. It doesn't deserve that name whatever.

page 1790 } Q. Were you working at the tippie or on the ground there on the 26th?

A. Well, I was on the ground. I didn't have no work in the tippie to do. The laborers were on the ground.

Q. When Hart's men were there you never heard any cursing, did you?

A. I can't recall if I did. If I did I don't remember it.

Q. I mean when you had a crowd there of 20 or 30 men like that in Kentucky, Breathitt County, you wouldn't expect any cursing, would you?

A. It is possible they could curse. It could happen you wouldn't hear it, even.

Q. Suppose you had crossed that Picket line, what do you think would have happened to you?

Colonel Harris: We object to that.

The Court: I sustain the objection.

page 1791 } By Mr. Robertson:

Q. Are you a pretty good shot, Mr. Bach?

A. Yes, sir.

Lee Bach.

Q. If Colonel Harris was up in the tippie and you were out in the woods, do you think you could shoot him out?

A. I would have to have a pretty high-powered gun if you shot from the woods to where the tippie was.

Q. You wouldn't have any doubt that you could shoot Colonel Harris off the tippie, would you?

A. I figure a man could if he wanted to.

Mr. Robertson: That is all.

RE-DIRECT EXAMINATION.

By Mr. Mullen:

Q. Mr. Bach, were you particularly interested one way or the other whether you got in the A. F. of L. or United Construction Workers when you were working there as a laborer with the laborers?

A. I was.

Q. Your aim was to get—

Mr. Robertson: Wait a minute. Let him finish. You asked him, and let him answer. He hadn't finished, I think.

The Witness: My desire was to get in the United Construction Workers union.

page 1792 ¹ By Mr. Mullen:

Q. You wanted to see the common laborers organized, or continue as they were?

A. I wanted to see them organized.

Q. You were foreman of those common laborers, you say?

A. That is right.

Q. On the 26th, had you heard anything or not, from Mr. Poe, about the card you signed up with him?

A. I had not.

Q. Then you went ahead and signed up with the United Construction Workers?

A. I did.

Mr. Mullen: That is all.

RE-CROSS EXAMINATION.

By Mr. Robertson:

Q. Just one more question. Were you scared to cross that picket line?

Burl King.

A. No, sir.

* * * * *

BURL KING

called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

page 1793 } **DIRECT EXAMINATION.**

By Mr. Mullen:

Q. Please state your name.

A. Burl King.

Q. Where do you live, sir?

A. Weeksbury, Kentucky.

Q. What county is that in?

A. Floyd County.

The Court: Talk just a little louder, Mr. King.

By Mr. Mullen:

Q. How old are you?

A. Thirty-seven.

Q. Were you born and raised in Kentucky?

A. Yes, sir.

Q. Where were you born?

A. In Magoffin County.

Q. But you now live in Floyd?

A. Yes, sir.

Q. Are you a member of any union?

A. Yes, sir.

Q. What is it?

A. United Mine Workers.

Q. Were you working for Laburnum Construction Corporation in July, 1949?

A. Yes, sir.

Q. What kind of job did you have there?

page 1794 } A. I was rated as common laborer, but I was driving a truck?

Q. Were the common laborers organized in any union?

A. No, sir.

Q. Do you know whether any effort had been made to organize?

A. No.

Q. Where were you working on the 26th day of July, 1949?

Burl King.

A. I was helping build a schoolhouse, hauling some timber for the schoolhouse.

Q. Who else was working there with you?

A. Jerry Barnett.

Q. What were you doing?

A. We were loading some timber on a truck just across the road from the schoolhouse, and hauling it over to where they were building the schoolhouse.

Q. Did you see Mr. Hart and some men come over to the job site on the morning of the 26th?

A. Yes, sir.

Q. About what time?

A. Oh, I imagine around 10 o'clock, sometime. I don't know exactly.

Q. When they got there, what did they do?

page 1795 } A. The guys all began to mix around through each other and talking. That is about all I know.

Q. Who were the carpenters on the job there, do you know?

A. I knew some of them. I didn't know any of them very well, only just by name was all.

Q. Was there any conversation between the carpenters and Mr. Hart or the men with him?

A. They were just talking to each other when I went over there.

Q. You were loading or unloading lumber out on the road?

A. Yes. I was loading it on the truck and hauling it over to the schoolhouse place.

Q. You say you went across to see what they were doing?

A. Yes.

Q. Did you hear any conversation that took place?

A. Nothing only just some of the guys were mixing around through each other, and I knew some of them pretty well that came over there from Magoffin County.

Q. Did you see anybody drunk?

A. No, sir.

Q. Did anybody have guns?

A. No, sir.

Q. Did you hear any threats being made
page 1796 } against anybody?

A. No, sir.

Q. Did you hear Mr. Hart say what he was there for?

A. No, sir, I never even spoke to him at that time.

Q. You never spoke to him?

A. No, sir.

Q. How many men would you say were with him?

Burl King.

A. I would estimate between 20 and 30, maybe.

Q. Did you see any physical contacts, or not, between the carpenters and any of the men with Mr. Hart?

A. No, sir.

Q. How long did they stay there?

A. I don't know just exactly. Not more than half an hour, I don't suppose.

Q. Which direction did they go?

A. They went down the road.

Q. Down the road is toward what?

A. Toward the tipple.

Q. Toward the tipple?

A. Yes, sir.

Q. Did you finish unloading or loading your lumber there?

A. I unloaded the truck and then drove along behind the guys as they went down the road.

Q. You were loading the lumber, you said, to get lumber to bring to the schoolhouse?
page 1797 } A. That is right.

Q. And there you were unloading it, you say?

A. Yes. I had a few pieces already loaded up, you see, where I was loading it, so I just throwed those boards off and followed the guys on down the road.

Q. Did you follow in the truck?

A. Yes, sir.

Q. You were driving the truck?

A. Yes, sir.

Q. Was anybody in the truck with you?

A. There was a guy who was helping me, in the cab with me, and a few of those guys who were walking got on the back end of the truck and rode down.

Q. Whom do you mean by "guys who were walking"?

A. Those guys who were with Hart.

Q. They got on the truck and rode on up with you?

A. Yes, sir.

Q. How far did you go in the truck?

A. I went to the tipple.

Q. What did you do with your truck then?

A. I parked it.

Q. Then what did you do next?

A. I went out where the guys were. One of them asked me if I wanted to sign one of those statements, I mean those cards to join up with the union, and I told him
page 1798 } I did, and I joined it.

Q. You signed one?

Burl King.

A. Yes, sir.

Q. Were you forced to sign, or did you sign it voluntarily?

A. I signed it voluntarily.

Q. Did you see anybody else sign them?

A. Yes, sir.

Q. Did you see whether they were being forced to sign, or whether—

A. No, sir, I didn't see anybody forced.

Q. How long did you stay there?

A. I stayed around until the tippie quit running, you see. I was boarding with an old guy who was working on the tippie, and I had to wait until he knocked off from work to go home.

Q. So when he knocked off from work, what did you do; go home with him?

A. Yes, sir.

Q. Did you come back to the job site any more?

A. Yes, sir.

Q. How often did you come back?

A. I come back for about a week after that. I was trying to get on with the Coal Company.

Q. When you came back those days, did you page 1799 } see any picket signs or any people there with the picket signs?

A. I remember seeing the picket sign one time when I came back.

Q. Were Hart and his men friendly or unfriendly with the carpenters at the schoolhouse?

A. They all seemed to be friendly, to me

Mr. Mullen: The witness is with you.

CROSS EXAMINATION.

By Mr. Robertson:

Q. When did you join the United Mine Workers?

A. The third day of last May.

Q. That would be May 3, 1950?

A. Yes, sir.

Q. What were you doing between the time Laburnum quit and the time you joined United Mine Workers?

A. I worked for Codell Construction Company at Spring Fork after that for about three months, I guess. Then I was signed up on my unemployment after I got laid off there.

Burl King.

Q. You couldn't go to work in Eastern Kentucky without joining up with the United Mine Workers, could you?

A. That is right.

Q. What?

A. They always join up, sign up as soon as they get a job in a coal mine. They hire you, but you have to join the union later.

page 1800 } Q. You also signed an application to join the
A. F. of L. out there on the Laburnum job, didn't you?

A. Not that I remember of.

Q. I refer now to Plaintiff's Exhibit 57-8, and ask you if that is your signature?

A. (Examining document.) Yes, that is my signature, but I don't remember signing it.

Q. Did Robert Poe ask you to sign up?

A. I don't know Robert Poe.

Q. Did the Hackworth's ask you to sign up?

A. No, sir.

Q. You don't know who asked you to sign up?

A. No, sir. If I signed that, I don't remember who it was.

Q. You don't know Lee Bach's signature, do you?

A. Lee Bach?

Q. Yes.

A. Do you mean do I know his signature?

Q. Yes.

A. No, I don't.

Q. Did you ever tell Mr. Delinger that you wanted to sign up with the A. F. of L. quick before the United Construction Workers turned the heat on you?

A. No, sir.

page 1801 } Q. Did you go back to work for Laburnum
after the 26th?

A. Yes, sir.

Q. At what rate of pay?

A. Ninety cents.

Q. Do you think there was any need to bring 20 or 30 people there to sign you up, if you wanted to sign willingly?

A. No, sir.

Q. Are you a pretty good shot?

A. Well, I don't know. I have tried to shoot a rifle for a long time. I had quite a little practice when I was in the service.

Q. Did you qualify as an expert marksman?

A. No.

Ernest Howard.

Q. How do you rank out in Breathitt County? Are you a pretty good shot or pretty poor shot?

A. I guess I would be pretty good with a shotgun. That is all I use in hunting.

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page 1802 }

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ERNEST HOWARD

called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. What is your name, please?

A. Ernest Howard.

Q. How old are you?

A. Twenty-nine.

Q. Where do you live?

A. I live in Kentucky, Magoffin County.

Q. How long have you lived there?

A. I have lived there practically all my life.

Q. Born and raised there?

A. Yes, sir.

Q. Married?

A. Yes, sir.

Q. Do you have any children?

A. Three.

Q. Are you a member of any union at this time?

A. United Mine Workers.

Q. How long have you been a member of United Mine Workers?

A. Well, about 9 months, I would say.

page 1803 } Q. Where are you working now?

A. I am working for Pond Creek Pocahontas.

Q. At what point?

A. Breathitt County, Kentucky.

Q. Were you working for Laburnum in 1949?

A. Yes, sir.

Q. How long had you been working for them? When did you go to work for them, do you know?

Ernest Howard.

A. I went to work, I believe, sometime in May.

Q. What was your job with them?

A. Laborer.

Q. Were you at that time a member of any labor union?

A. No, sir.

Q. Do you know Robert Poe?

A. Yes, sir.

Q. Did you or not sign an application for the Salyersville Union for him?

A. Yes, sir.

Q. Did anything ever come of that?

A. No, sir.

Q. Did you ever hear anything more about it after you signed?

A. I never heard anything about it.

Q. Did you know Mr. Hart?

A. I knew him when he came in Breathitt page 1804 } County.

Q. Did you first know him or see him on the 26th, or before that?

A. I seen him before that, one time, at a union meeting.

Q. When was that union meeting?

A. I don't remember the date. It was on a Sunday. I believe it was the 24th.

Q. Did Hart ask you to join any union?

A. He asked me if I wanted to join.

Q. What did you tell him?

A. I told him yes.

Q. When did you sign a card for the United Construction Workers?

A. I signed the card on the 26th of July.

Q. Did you know whether or not they were coming over to get the laborers to sign up at that time?

A. Yes, sir.

Q. Where were you when they came over on the 26th?

A. Working on the schoolhouse.

Q. What were you doing on the schoolhouse?

A. I was laboring. I was carrying lumber across from below the road up to the schoolhouse, and helping saw it off.

Q. Carrying it from below the road—was that where it was unloaded?

A. That is where it was unloaded.

Q. And then carried it over to the school- page 1805 } house?

A. Yes, sir.

Ernest Howard.

Q. And were helping to saw it up?

A. That is right.

Q. Were there some carpenters working there?

A. Yes, sir.

Q. Do you know who they were?

A. Junior Hackworth and Bob Hackworth were two, and that is about all I recall.

Q. When Mr. Hart and the men with him got there, did they come to the schoolhouse or not?

A. Yes, sir.

Q. What occurred then, do you know?

A. They asked the men if they wanted to join the union, and the laborers told him yes, they would like to join, and they all quit work.

Q. Did he say whether or not the carpenters were to join?

A. He told the carpenters if they wanted to join, they could join.

Q. Did he say they would have to join?

A. No, sir.

Mr. Robertson: I am just laughing at your leading him. You don't mind that, do you?

Mr. Mullen: I think the question was framed in the dis-
page 1806 } junctive.

Mr. Robertson: I don't object.

Mr. Mullen: All right.

By Mr. Mullen:

Q. Were any of the men armed, that you saw?

A. No, sir, not that I saw.

Q. Did you hear any threats, or not?

A. No, sir.

Q. Did you see Junior Hackworth talking with Mr. Hart or with any of the men with him?

A. I didn't see any of them talking to him. He was just talking to the group.

Q. You were working, sawing the lumber on the sawhorse. Which side of the lumber, as it laid across there, was Junior Hackworth on; the side nearest to the schoolhouse or farthest from the schoolhouse?

A. I don't remember.

Q. Where did you sign? Where were you when you signed up?

A. I was at Tipple No. 1.

Ernest Howard.

Q. You had left the schoolhouse and gone up to Tipple No. 1?

A. Yes, sir.

Q. Did you sign of your own free will?

A. Yes, sir.

page 1807 } Q. Did you see any others signing?

A. No, I don't believe I did.

Q. Did you hear any threats up there?

A. No, sir.

Q. Any violence noted?

A. No, sir.

Q. Did the laborers know what Hart was coming there for?

A. Yes, sir.

Q. Did they or not join in the strike when he got there?

A. Sure, they joined in.

Q. You were not in the toolhouse when the discussion occurred there? Were you or were you not?

A. No, sir.

Q. How long did you stay around the tipple?

A. I stayed around a couple of hours, I guess.

Q. What did you do then?

A. I went home.

Q. Did you come back on the 27th or any other day?

A. Yes, sir, I came back the next day.

Q. What happened the next day?

A. Nobody wanted to work.

Q. Did anybody ask you to go to work?

A. Yes, sir.

Q. Who did?

page 1808 } A. Mr. Bryan.

Q. Did he say at what rate he wanted you to go to work?

A. He wanted us to go to work as carpenter's helpers at 90 cents an hour.

Q. What did you say to him?

A. I told him I didn't want to work at that.

Q. Were you then paid up, or not?

A. No, sir.

Q. Did you get any part of your pay that day?

A. Yes, sir, I got the check that was coming to me.

Q. Did you ever get the rest of it?

A. I got it later on.

Mr. Mullen: The witness is with you.

Ernest Howard.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Wednesday, the 27th, was payday, wasn't it?

A. Yes, sir.

Q. You are working there for Pond Creek, there where the job site was? You are working there now?

A. No, I am working at No. 3 now.

Q. How far is that from where Laburnum was?

A. That is five miles, I believe they call it.

Q. Where are you living now?

A. Magoffin County.

Q. How far from where you work?

page 1809 } A. Seventeen miles.

Q. Does everybody working on that job where you work, belong to the United Mine Workers?

A. Yes, sir.

Q. You can't work there unless you belong to them, can you?

A. No, sir.

Q. I refer to Plaintiff's Exhibit No. 57-5, and ask you if that is the application you signed to join the A. F. of L.?

A. (Examining document.) Here is my signature, yes, sir.

Q. Did you ever tell Delinger, or anybody else working for Laburnum, that you wanted to join the A. F. of L. quick before the other people turned the heat on, before Hart's people turned the heat on you to make you join them?

A. No, sir.

Q. Did you want to do that?

A. No, sir.

Q. Are you related to the State Trooper, Homer Howard?

A. A distant relation, yes.

Q. What kin is he to you?

A. He is about a third cousin, I think.

Q. Did you and he come in here together from Kentucky?

A. No, sir.

Q. You came in separately?

page 1810 } A. Yes, sir.

Q. What hotel are you staying at?

A. King Carter.

Q. Is he staying there?

A. He was.

Q. Did you all discuss the case at all while you were here staying at the same hotel?

A. No, sir.

Ernest Howard.

Mr. Robertson: Stand aside.

RE-DIRECT EXAMINATION.

By Mr. Mullen:

Q. Was any heat put on you by Mr. Hart to sign?

A. No, sir.

Q. The laborers were not represented by anybody before that; were they or were they not?

A. They were not.

Mr. Mullen: Stand aside.

RE-CROSS EXAMINATION.

By Mr. Robertson:

Q. Did you tell Hart you had already signed up with the

A. F. of L.?

A. No, sir.

Q. Why didn't you?

A. He didn't ask me.

Q. Why didn't you tell him?

page 1811 } A. He didn't ask me.

Q. Did you want to join both?

A. I wanted to join some union to give me more pay.

Q. Did you want to join both of them?

A. Sure I did, or I wouldn't have joined them.

Mr. Robertson: That is all.

RE-DIRECT EXAMINATION.

By Mr. Mullen:

Q. Did you want to join both at the same time, or either one?

A. I wanted to join either one.

Q. You didn't want to be in both at the same time—

Mr. Robertson: I am going to ask you to stop leading him any more.

Mr. Mullen: I am simply using your question.

Mr. Robertson: I know, but you have your own witness on cross-examination, and stop telling him what you want him to say.

Jerry Barnett.

Mr. Mullen: I am not telling him what I want him to say.

Mr. Robertson: Yes you are, and you know it.

The Court: All right, gentlemen.

Any further questions?

Stand aside.

(Witness excused.)

page 1812 } Mr. Robertson: I want you to stop leading
your witnesses.

The Court: We will recess now.

(Brief recess.)

Mr. Mullen: Call Jerry Barnett, please.

Whereupon,

JERRY BARNETT

called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Please state your name?

A. Jerry Barnett.

Q. How old are you?

A. Forty.

Q. Married?

A. Yes, sir.

Q. Do you have any children?

A. I have three.

Q. Where do you live?

A. I live in Breathitt County, Kentucky.

Q. Whereabouts in Breathitt County?

A. In the eastern section of Breathitt County.

Q. Are you a member of any union?

A. Sir?

page 1813 } Q. Are you a member of any union?

A. Yes, sir.

Q. United Mine Workers?

A. United Mine Workers.

Q. What is your present work?

Jerry Barnett.

A. I work in the mines in Breathitt County.

Q. For what company do you work?

A. Pond Creek Pocahontas.

Q. How long have you lived in Breathitt County?

A. I have lived there all my life.

Q. Did you work for Laburnum Construction Corporation in 1949?

A. Yes, sir.

Q. When did you go to work for them?

A. As well as I remember it, it was in January.

Q. Of what year?

A. Of 1949.

Q. What was your job there?

A. Laborer.

Q. When you went there, were the laborers members of any union?

A. No, sir.

Q. Do you know Mr. Hart?

A. Yes, sir, I do.

Q. When did you first meet him?

A. I am not sure of the day, sir; in the early
page 1814 } part of July, though.

Q. Where did you meet him then?

A. On the job.

Q. Was anybody with him?

A. Not the first time I saw him, as I remember it.

Q. What did you discuss; anything?

A. Yes, we did. We discussed the business affairs of United Construction Workers, which he was representing.

Q. What was his purpose there?

A. His purpose there was to organize the Laburnum laborers under the United Construction Workers.

Q. What was your attitude toward that purpose?

A. You mean as to whether I wanted to be organized or not?

Q. Yes.

A. I did.

Q. Do you know what the other laborers in your group wanted?

A. Yes, sir, I do.

Q. What did they want?

A. They wanted to be organized.

Q. Did you or did you not sign an application for membership for Mr. Hart?

Jerry Barnett.

A. I did.
 page 1815 } Q. Did Mr. Hart return to the job site any
 other times between then and the 26th of July,
 1949?

A. Yes, sir. He was there some 2 or 3 times.

Q. What was he there for, those other times.

A. To hold meetings with the laborers and to explain to
 us what the United Construction Workers Union represented.

Q. Do you know Robert Poe?

A. Yes, sir.

Q. Is he a representative of any union?

A. My understanding is that he was a representative of the

A. F. of L.

Q. Did Mr. Poe take up with the laborers the question of
 joining the A. F. of L.?

A. No, sir, he didn't, himself.

Q. Who did?

A. Some of us talked to him about it.

Q. Did you do anything toward getting into the A. F. of L.
 Union?

A. Yes. We signed applications for membership in the
 A. F. of L.

Q. What became of those applications?

A. I don't know, sir.

Q. Were you ever taken into the A. F. of L.?

A. No, sir.

Q. Do you know whether any of the other la-
 page 1816 } borers were taken in?

A. No, sir, I don't.

Q. Did you ask Mr. Poe at any time what he had done?

A. Yes, sir.

Q. What did he say?

A. He said he had done for us all that he could do; that
 his job was to present the applications, and that was as far
 as he had anything to do with it; that it was up to their Busi-
 ness Agent then to carry on from there.

Q. Did you ever hear anything from that Business Agent?

A. No, sir.

Q. Were you at a meeting in Carver?

A. Yes, sir.

Q. On the 24th day of July, 1949?

A. Yes, sir, I was.

Q. Do you know who called that meeting?

A. Yes, sir.

Q. Who?

Jerry Barnett.

A. Mr. Hart.

Q. Do you know who he asked to come to the meeting?

A. No, sir, I don't, beyond myself.

Q. Did you get word to come?

A. Yes, sir.

Q. When you were at the meeting, were there any laboreys of Laburnum there?

page 1817 } A. Yes, sir.

Q. Do you know any of the Codell Construction and Allen-Codell people?

A. Yes, sir, I know a few of them.

Q. Were any of them at the meeting?

A. Yes, sir.

Q. What report or discussion was made by Mr. Hart at the meeting?

A. Mr. Hart talked to us concerning the UCW, the United Construction Workers. He told us just what protection it would give us, what our wages would be, and just business matters concerning the United Construction Workers.

Q. Did he discuss the situation with the Codell people at that time?

A. Yes, sir.

Q. What did he say about that?

A. Sir, I don't understand that question.

Q. What did he say about the Codell people; anything about whether he had been working with them?

A. Oh, yes, yes,

Q. Did he make any report to the Laburnum laborers who were present?

A. I don't believe I understand the question.

Q. Did he make any report to the Laburnum laborers who were present at that meeting?

page 1818 } A. On what? Report on what?

Q. On whether he had been able to accomplish anything for them?

A. Oh, yes, he did.

Q. What did he report?

A. He said he hadn't had any luck; that he had contacted Laburnum officials by telephone, and had had no luck.

Q. Mr. Barnett, I want to read to you a list of laborers that it has been testified were in the employ of Laburnum at that time, and ask you which, if any, were present at that meeting, if you know.

You were present, of course.

Was Alvis Salyers present?

Jerry Barnett.

A. I don't know the man.

Q. Was Ossie Lovely present?

A. Yes, sir.

Q. Luther Litteral?

A. Yes, sir.

Q. Lee Bach?

A. Yes, sir.

Q. Ernest Howard?

A. Yes, sir.

Q. Dan Combs?

A. Yes, sir.

Q. Green Trusty?

page 1819 } A. I don't know about him.

Q. Donald Trimble?

A. I don't know him.

Q. Matt Miller?

A. Yes, sir.

Q. Green Conley?

A. I don't know about him, whether he was there or not.

Q. Burl King?

A. Yes, sir.

Q. Hargus Howard?

A. I am not sure of him.

Q. John Jordan?

A. Yes, sir.

Q. George P. Miller?

A. I am not sure of him.

Q. Homer Rowe?

A. I don't know him.

Q. How many people were present at that meeting?

A. Does that include the ones that didn't sign with us, or—

Q. I want to know how big a crowd was there, whether they were laborers or whether they were spectators, or what?

A. I would say around 80.

Q. Did they stay there during the whole meeting?

A. They stayed around, yes.

page 1820 } Q. Did the laborers that you have stated were present, take an obligation to the UCW at that time?

A. All that were signed up with Mr. Hart did.

Q. Were they signed up in the presence of the 80 people you said were there? Did they take their obligation in their presence?

A. No, sir.

Jerry Barnett.

Q. How did that come about?

A. Mr. Hart asked all that had not signed up and were not taking the obligation to leave the room.

Q. After the obligation was taken, were there any steps taken by Laburnum employees who had obligated themselves, to elect any officers or anybody to represent them?

A. Yes, sir.

Q. Who were elected?

A. Ossie Lovely and myself.

Q. In what capacity were you elected? What was your title?

A. We were elected as a Negotiating Committee to negotiate for a contract with Mr. —I mean to go with Mr. Hart and negotiate with the company for a contract, and higher wages.

Q. Was there any decision made at that meeting as to the steps to be taken to bring about negotiations?

A. Yes, sir.

page 1821 } Q. What were they?

A. The decision was made to call a strike.

Q. Who made a motion to call a strike?

A. I did.

Q. Was there any second to it?

A. Yes, sir.

Q. Who seconded it?

A. Robert Harrison.

Q. Who was he working for?

A. He was working for Allen-Codell.

Q. Did the Codell people also vote to strike?

A. There were two Codell jobs. As I understand it, Codell and Faulconer were already on strike, and Allen-Codell's men did vote for strike at the same time.

Q. Did you then make any plan as to procedure in the strike?

A. Yes, sir.

page 1822 } Q. What was the plan?

A. We agreed to strike on the following day, which would be Monday, provided Mr. Hart could get in to us.

Q. What do you mean by provided he could get in to you?

A. Well, we had newly built roads in there, and it was raining quite a bit, and during rainy weather it was impossible for cars or anything to get in and out.

Q. Did he get in to you on Monday the 25th?

A. No, sir.

Q. When did he get in to you?

Jerry Barnett.

A. On Tuesday, the 26th.

Q. To which group of men, that is, Laburnum or Allen-Codell did the plan call for to be first approached?

A. The Codell crews were below us, farther down the road, and Mr. Hart had to come by them first before he got to where I was working, so he came to them first and on to where I was working.

Q. Where were you working that day?

A. I was working about a mile above the No. 1 tipple where a schoolhouse was being built.

Q. Who else was working there with you? That is, among the laborers.

A. Burl King is the only man I am sure of and the laborers.

Q. Were you there at the schoolhouse at the page 1823 } time that Mr. Hart and a group of men came there.

A. I was just across the road from the schoolhouse.

Q. What were you doing?

A. Burl and I were hauling some lumber for the carpenters to use in building the schoolhouse.

Q. How many men would you say were with Mr. Hart?

A. I can only make a guess. I would say 20 or 30.

Q. How were those men dressed?

A. They were just commonly dressed as working men also are.

Q. Did they have on their working clothes, you mean, some of them?

A. Some of them did, yes, sir.

Q. Was it a cool day or a hot day?

A. It was a pretty warm day.

Q. When they reached the schoolhouse did they talk to anybody?

A. Yes, sir.

Q. Who did they talk to?

A. Mr. Hart talked to the Hackworth that we knew as Hack on the job, and to my understanding Hackworth was the job steward for the A. F. of L.

Q. Do you know what was said?

A. No, sir; I do not.

Q. You were not close enough to hear what was said?

A. No, sir.

page 1824 } Q. You didn't go over there, did you?

A. No, sir; I did not.

Q. Did Burl King go over there and ask what they were doing?

Jerry Barnett.

A. I don't remember as to whether he did or he didn't.

Q. You say the group of men that came there when they first arrived?

A. Yes, sir.

Q. Did you see any guns?

A. No, sir.

Q. Did you see any drunk men?

A. No, sir.

Q. Did you see any clubs?

A. No, sir.

Q. Did you see any violence take place at that time?

A. No, sir.

Q. How long did Hart and his men stay there?

A. I don't know, 15 or 20 minutes, I should say.

Q. Then did they start somewhere else?

A. They started back down the road.

Q. Down the road meaning—

A. Back down in the direction from which they had come.

Q. And that was in the direction of what?

page 1825 } A. The No. 1 tippie.

Q. What about the men who were at the school-house, that is, the men who were working there before he arrived, where did they go or did they go anywhere?

A. They went on down the road, too, following on with the crew that had come up there and gone back.

Q. Were they walking or riding?

A. Some were walking, some were riding.

Q. What were you doing?

A. I rode the truck that I was working on.

Q. Was anybody else in the truck?

A. Yes, sir.

Q. The Laburnum men who had been on the job at the schoolhouse or other people?

A. Well, I don't know whether they were all Laburnum laborers or whether some were Codell's, but anyway several of the ones that were there did get on the truck and did ride down.

Q. You mean some of the men that came with Hart got on the truck?

A. Yes, sir.

Q. How far did you go on the truck?

A. We went down to the No. 1 tippie.

Q. Did you leave the truck there or what did you do?

Jerru Barnett.

A. Burl was driving, and the rest of us un-
page 1826 } loaded off the truck, and I don't know what Burl
did with the truck from there.

Q. What did you do?

A. I went in to the tippie.

Q. Did you go in the toolhouse?

A. No, sir.

Q. What were the men who came there with Hart doing
over at the tippie?

A. They went over there to try to see how many of the other
boys that hadn't signed up wanted to sign up and organize
with us, just walking around.

Q. You had already signed, you have testified. Did you
sign again?

A. I did.

Q. How did you happen to sign again?

A. Sir?

Q. How did you happen to sign a second time?

A. Just unthoughtedness on my part.

Q. Were you signing willingly or were you forced to sign?

A. Yes, sir; I signed willingly.

Q. Did you see them signing any of the other laborers?

A. Yes, sir.

Q. Did you see whether they were using any force to make
them sign?

A. I didn't see any.

page 1827 } Q. Did or did not the laborers know that Mr.
Hart was coming over there to sign them up?

A. You mean before he ever came in there?

Q. Before the 26th.

A. Yes, sir.

Q. How long did you stay there that day?

A. On the 26th?

Q. Yes.

A. Just a very short time, just long enough—as I passed
by, one of the boys called to me, in fact John Jordan, told
me to come over and sign one of those. Without giving
thought as to what I was doing, I did walk over and sign one
of the applications for membership, but I had already signed
one before.

Q. You had already signed?

A. Yes, sir; and then signed again.

Q. You just signed again. And you had already obligated
yourself, had you not?

A. Yes, sir.

Jerry Barnett.

Q. When did you return, if you did, to the job site?

A. I don't know, not for some two or three days afterward.

Q. You didn't come there on the 27th?

A. No, sir.

Q. When you did return did you see any picket page 1828 } signs or pickets?

A. Yes, sir.

Q. Where were the men on the picket line?

A. I only saw two, and they were in the road right where we leave the main road and turn down to cross the creek to go over to the tippie.

Q. Did you know how the men were selected to act as pickets?

A. Yes, sir.

Q. How was that?

A. They were selected by Mr. Hart. He would choose one or two to stay on the picket line one day, the one or two or three, whatever he felt like would make enough, then to relieve them and be on the next day.

Q. Were you ever present with Mr. Hart or with any one else when Mr. Bryan was present?

A. Yes, sir.

Q. Do you recall when that was?

A. Not the date, no, sir.

Q. Did you talk to Mr. Bryan or did Mr. Bryan make any statement to you or in your presence at that time?

A. Yes, sir; he talked to Mr. Hart.

Q. What did he say?

A. We met in Salyersville, Kentucky, and Mr. Bryan told Mr. Hart that he couldn't negotiate a contract page 1829 } with him on account that his A. F. of L. carpenters would pull all their men off his job.

Q. What did Mr. Hart say to him?

A. Mr. Hart asked him why the A. F. of L. carpenters and the United Construction laborers couldn't work together.

Q. Did you go with Mr. Hart over to Salyersville to meet with a group of A. F. of L. people?

A. Yes, sir.

Q. Were you all admitted to the meeting?

A. No, sir.

Q. Were you at the job site any more after that?

A. Yes, sir.

Q. When was that?

A. As well as I remember, on the Friday after the strike

Jerry Barnett.

on the 26th, on Tuesday. It was some two or three days afterward, anyway. I am not sure of the date.

Q. Was that the time whe you saw the picket sign and the men there on the picket?

A. Yes, sir.

Mr. Mullen: The witness is with you.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Barnett, how big a place is Tiptop?

A. It is a very small place.

Q. Just four or five houses?

A. I would say more than that. I don't know how many.

Q. Would you say it is just a village of 200
page 1830 } or 300 people?

A. Yes, something like that I suppose.

Q. How far is Carver from Tiptop?

A. I don't know.

Q. It is a mile or so, isn't it?

A. I suppose it is, yes.

Q. That is a place about the same size?

A. All I can say I saw the day I was there was the school-house. That is far as I went.

Q. I am talking about Tiptop and Carver.

A. I don't know. I have not been in—if there is a town of Carver, I haven't been in it.

Q. You have been to Tiptop?

A. Yes, sir.

Q. Was Hart's meeting on the 24th at Tiptop or Carver?

A. It was at the Carver schoolhouse.

Q. Do you know how far Beaver Creek is from there?

A. Sir?

Q. Do you know how far Beaver Creek is from there?

A. No, I don't know where Beaver Creek is.

Q. Hart had another meeting there on Sunday, the 31st of July, didn't he?

A. I don't know.

Q. You were not there?

page 1831 } A. No, sir.

Q. When you were working across the road from the schoolhouse when Hart's crowd came to the schoolhouse, why didn't you go over to the school house to see what was going on?

Jerry Barnett.

A. I didn't think it necessary. In fact, I knew what they were there for, and I knew why they had come.

Q. You weren't scared to go over there, were you?

A. No, sir; not by any means.

Q. You just didn't have any business over there?

A. That is right.

Q. You say you had signed this application for the A. F. of L., and I refer to Plaintiff's Exhibit No. 57-2, and ask you if that is your signature.

A. That is.

Q. Did you ever tell any of the Laburnum people that you want to join the A. F. of L. quick before Hart's crowd got to you and put the heat on you to make you join them?

A. No, sir; I did not.

Q. Do you mean that when you signed up the second time for Hart there at the tippie on July 26 that you did not remember that you had already signed for him before?

A. I just didn't give it any thought, sir.

Q. I say, but did you forget that you had signed it?

A. I must have.

page 1832 } Q. You were not conscious the second time
that you had already signed for Hart once before?

A. At the time that I signed, no, sir.

Q. When you signed for Hart the second time did you also forget that you had signed up with the A. F. of L.?

A. No, sir.

Q. Did you remember it?

A. Yes, sir.

Q. Why were you signing up for both unions?

A. Because the A. F. of L. didn't give us any action.

Q. And you wanted to sign up—you wanted to join both unions so both of them would leave you alone?

A. No, sir; I did not.

Q. Hart told you that he would give you better protection than the A. F. of L., you say?

A. No, sir; he did not.

Q. You just said something about protection. What did you say?

A. He merely said that he would give us better working conditions and higher wages.

Q. Did he use the word "protection"?

A. No, I don't know about that. If he did, I don't remember it.

Q. How did you happen to use the word protection?

Jerry Barnett.

page 1833 } A. Well, I just happened to use it, I suppose.
Q. You just expressed your thoughts?

A. Yes, sir.

Q. Why didn't you go back to the job site on July 27th?

A. I knew there was no need when we weren't working.

Q. And you also were scared to go back, weren't you?

A. No, sir.

Q. You thought you had plenty of protection?

A. No, sir; I didn't think that.

Q. Did you think you had too little protection?

A. No, sir; I didn't think that.

Q. What did you think?

A. I just knew it wasn't necessary for me to go back because we weren't working?

Q. Where are you staying here in Richmond?

A. The King Carter Hotel.

Q. How many of you people from Kentucky here are also staying there?

A. I don't know, possibly 12 or 15.

Q. Have you all been talking this case over among each other while you have been here in town?

A. No, sir. You mean the ones of us who came here as witnesses?

Q. Yes.

A. No, sir; we haven't been talking it over. It possibly has been mentioned a few times in some way.

page 1834 } Q. But you haven't talked it over about who was going to testify to what?

A. No, sir.

Q. Have you talked it over with your lawyers?

A. Yes, sir.

Q. You have talked it over with them?

A. Yes, sir.

Q. But not among the people over at the hotel.

Hart was also organizing the employees up at the Pond Creek Pocahontas store at Evanston, wasn't he?

A. I beg your pardon?

Q. I say Hart was also during this time we have been talking about organizing the store employees up there at Evanston, wasn't he?

A. I don't know.

Q. When did you join the United Mine Workers?

A. In August, I believe.

Q. Early in August?

A. Yes, sir.

Jerry Barnett.

Q. And Laburnum got out of there what time in August?

A. He left out in July.

Q. What time in July? He was there on the 26th. When was it after that that Laburnum pulled out?

A. Some three or four days after we came out on strike on the 26th.

Q. You joined the United Mine Workers four page 1835 } or five days after Laburnum pulled out?

A. Some time in August. I don't remember the exact time.

Q. Did you also join the United Construction Workers?

A. I did.

Q. Did you also join District 50?

A. I don't know what you mean by District 50.

Q. But you did join the United Construction Workers and the United Mine Workers both?

A. Yes, sir.

Q. And signed up to join the A. F. of L. also?

A. Yes, sir.

Q. Are you a pretty good shot?

A. Well, I can make out to kill a squirrel when I am squirrel hunting.

Q. Do you think it would be all right for me to go to Breathitt County after this trial is over?

A. I do, sir.

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Mr. Mullen: Your Honor, we have some depositions we would like to read.

Mr. Robertson: I want to see which ones they are. If you are bringing those in where we claim you didn't page 1836 } give us notice, I want to see them before you shoot them in.

Mr. Mullen: You can see them. These, however, are not those. These are the ones that your people were present at the taking of.

Mr. Robertson: I don't object to them, then.

(Discussion off the record.)

Mr. Mullen: Colonel Harris will read the questions and I will undertake to read the answers.

Mr. Robertson: We are not going to make any objections. What are those, Salvati's?

Mr. Mullen: Salvati, Smith, and Haslam.

Mr. Robertson: I withdraw all objections to everything so far as they are concerned.

The Court: Are you ready, gentlemen?

Mr. Mullen: We are ready, if Your Honor please.

Mr. Robertson: I count on you not to leave out anything, Mr. Mullen. I have left my copies at the office.

Mr. Mullen: I won't leave out anything. I didn't follow you when you were reading. I took it for granted.

Mr. Robertson: Yes, you did. You watched me like a hawk. I count on you.

The Court: Go ahead and move on.

page 1837 } (At this point the depositions of Raymond E. Salvati and Hiram L. Smith, were read to the jury, Colonel Harris reading the questions and Mr. Mullen reading the answers, as follows:)

“In the Circuit Court of the City of
Richmond, Virginia

“Laburnum Construction Corporation,
a corporation, Complainant,

v.

“United Construction Workers, affiliated with United Mine Workers of America; District 50 United Mine Workers of America, and United Mine Workers of America, Defendants.

DEPOSITIONS.

“The depositions of Raymond E. Salvati and Hiram L. Smith, taken before me, Betty Bratton, a Notary Public for the County of Cabell, in the State of West Virginia, pursuant to notice hereto annexed, at the offices of Fitzpatrick, Strickling, Marshall and Huddleston, in the First Huntington National Bank Building, Huntington, West Virginia, on the 15th day of June, 1950, between the hours of 10 a. m. and 5 p. m., to be read in evidence on behalf of the defendants, in a certain action at law, now pending in the Circuit Court of the City of Richmond, in the State of Virginia, wherein United Construction Workers affiliated with United Mine Workers of America; District 50 United Mine Workers of America, and United

Raymond E. Salvati.

Mine Workers of America are defendants, and
page 1838 } Laburnum Construction Corporation is com-
plainant.

“Appearances: For the Complainant: Hunton Williams, Anderson, Gay & Moore (by Francis V. Lowden, Jr., and Lawrence E. Blanchard, Jr.)

“For the Defendants: Fred G. Pollard and James Mullen.”

Mr. Robertson: Excuse me one minute, please. I just want to call attention for purposes of the record that the Plaintiff has already read this deposition and also Mr. Salvati's deposition which was taken for the Plaintiff on a later date, and if they are going to read one, I think they ought to read both of them over again. If they are going to read one over again, they ought to read both over again, but I leave that up to what they think is fair to do.

Mr. Mullen: If Your Honor please, we don't think so. They have already offered their depositions. We are offering ours in due course in the presentation of our own case; and they took our depositions and read them, and we could have objected to it.

Mr. Robertson: But you couldn't have stopped it.

Mr. Mullen: We could have stopped you as long as we were going to offer it ourselves. You had a right to use it if we didn't offer it, but we were going to offer it. We are not forced to read their depositions again.

Mr. Robertson: We don't want you to read it if you don't want to.

page 1839 } The Court: Go ahead, gentlemen.

(The reading of the depositions continued, as follows:)

“RAYMOND E. SALVATI,

“DIRECT EXAMINATION.

“By Mr. Mullen:

“Question: Mr. Salvati, will you please state your name, residence and business?

“Answer: My name is Raymond E. Salvati. I am presently President of the Island Creek Coal Company, Pond Creek Pocahontas Company, Marianna Smokeless Coal Company. I live at 1130 Ritter Park, Huntington, West Virginia.

Raymond E. Salvati.

"Question: What is the connection, if any, of the Spring Fork Development Company with the Pond Creek Pocahontas Company?

"Answer: The Spring Fork Development Company is a wholly owned subsidiary of the Pond Creek Pocahontas Company.

"Question: How long have you been President of the Pond Creek Pocahontas Company?

"Answer: One year.

"Question: What was your position prior to that time with them?

"Answer: Vice-President in charge of operations.

"Question: And were you Vice-President in charge of operations in 1948 and 1949?

"Answer: I was in '48 and for the first six months of '49.

"Question: Did the Pond Creek Pocahontas
page 1840 } Company enter into a contract in 1948 with the
Laburnum Construction Corporation, a Virginia
corporation, to have any work done in Kentucky?

"Answer: Well, the Spring Fork Development Company did.

"Question: The Spring Fork Development Company? Didn't the Pond Creek Pocahontas Company also enter into a contract? The plaintiff alleges in their notice of motion that there were two contracts.

"Answer: Yes, that is correct. The Pond Creek Pocahontas Company did enter into an agreement with the Laburnum Construction Company for the erection of the tipple and the Spring Fork Development Company, which is a wholly owned subsidiary of Pond Creek, entered into a contract for the construction of houses.

"Question: Was the work completed under the Pond Creek Pocahontas Company contract by the Laburnum Corporation?

"Answer: No.

"Question: Was the work completed under the Spring Fork Development Company contract?

"Answer: No, sir.

"Question: Were the contracts terminated at any time before the completion of the work?

"Answer: It was.

"Question: Was that by letter?

page 1841 } "Answer: By letter.

"Question: And who prepared that letter?

"Answer: Mr. Macdonald, our attorney.

Raymond E. Salvati.

"Question. You signed it?

"Answer: I signed it.

"Question: In the letter terminating each of the contracts, which are filed as exhibits with the notice of motion, this language appears: 'About noon on July 26, 1949, we understand that your men were prevented from continuing to work on the tipple by threats and other action of representatives of the United Construction Workers, a branch of District 50 of the United Mine Workers of America. Since that time no further work has been done on the tipple.' Do you know of your own knowledge of the threats or other action of the representatives of the construction workers or was that on information?

"Answer: Not personal knowledge, only through information.

"Question: The contract with the Pond Creek Pocahontas Company provided for a maximum fee for doing the work of \$12,000. Do you know what part of that fee was paid to the Laburnum Construction Corporation up till the time that the contract was terminated?

"Answer: I do not, and I suggest that in Mr. Smith's testimony he can tell you as to that.

page 1842 } "Question: And the same thing applies to the fee to be paid by the Spring Fork Development Company?

"Answer: Yes.

"Question: Has either of the two companies mentioned let any work to the Laburnum Corporation subsequently to the termination of those two contracts that we have spoken of?

"Answer: Do you mean after—

"Question: After the termination of the contract.

"Answer: No work has been done.

"Question: Subsequent to that time has any work been let by the Pond Creek Pocahontas Company or the Spring Fork Development Company?

"Answer: We had two contracts let since that time.

"Question: About what was the size of those, do you know?

"Answer: Let's see—about forty houses and a schoolhouse and a store.

"Question: Were they let on bids?

"Answer: Yes, they were let on bids.

"Question: Did the Laburnum Company bid on them?

"Answer: They did not.

Raymond E. Salvati.

"Question: If the Laburnum Company had bid and had been the low bidder, would the work have been let to them?

"Answer: Yes, it would have been.

"Question: Were you down at the site of the page 1843 } work being done by the Laburnum Construction Company at the time of the trouble there?

"Answer: I was present on an inspection trip on one particular day when trouble did arise.

"Question: Did you see a picket line there at that time?

"Answer: I did.

"Question: Did you note any violence or hear of any threats while you were there?

"Answer: I did not.

"Question: Do you know whose employees composed the picket line?

"Answer: I couldn't—I don't know.

"Question: Did the Pond Creek Pocahontas Company have contracts with the Allen-Codell Construction Company, Incorporated, for work at the site on the property where the Laburnum Construction Company were working at the same time?"

Mr. Mullen: Do you want to reiterate your objection?

Mr. Robertson: No I withdraw all my objections to everything about that entire deposition.

Mr. Allen: Skip over the objection.

(The reading of the depositions continued, as follows:)

"By Mr. Mullen:

"Question: You can go ahead and answer the question.

"Answer: I can answer it?

page 1844 } "Question: Yes.

"Answer: We did have a contract with those two concerns.

"Question: Do you know whether the employees of either of those concerns were on strike at the time, that is, between July 25 and August the 2d, at the time that the Laburnum Corporation terminated their work?

"Answer: I do not know.

Mr. Mullen: And further deponent saith not.
Now, Hiram L. Smith.

(The reading of depositions continued, as follows:)

“HIRAM L. SMITH,
the witness, having been first duly sworn, testified as follows:

“DIRECT EXAMINATION.

“By Mr. Mullen:

“Question: Please state your name, residence and business.

“Answer: Hiram L. Smith. I am Vice-President of the Pond Creek Pocahontas Company and various associated companies. I live at 1115 Fifth Avenue, Huntington, West Virginia.

“Question: Mr. Smith, when the contract between Pond Creek Pocahontas Company and the Laburnum Construction Corporation was terminated, what portion of the fee of \$12,000 payable to Laburnum under that contract had been paid

“Answer: It had been paid in full, I believe, page 1845 } at that time. If not, it was paid afterwards. I can't tell you the exact cutoff. There had been enough work done to earn the fee and they received it.

“Question: The full twelve thousand?

“Answer: Yes, sir.

“Question: In the case of the Spring Fork Development Company a maximum fee of \$2,500 was provided for. What part of that had been paid at the time of the termination of the work?

“Answer: My records show \$1,965.81.

“Question: Nothing was paid on that after the termination?

“Answer: Part of that may have been paid after the date of cancellation but the billing had not been in. That was the total amount paid.

“Question: Was \$12,000 the maximum fee that Laburnum Construction Company could receive under the Pond Creek Pocahontas Company contract?

“Answer: I believe it was.

“Question: Have you the original contracts with you here?

“Answer: No, I have not.”

Colonel Harris: Do you want that other conversation read or not, or just the questions.

Mr. Mullen: That is just where we called for the introduction of the contracts.

Mr. Robertson: If you say it is all right, I page 1846 } accept it without question.

Mr. Mullen: All right.

William A. Haslam.

Mr. Robertson: I was addressing myself to Mr. Mullen, Colonel Harris.

Colonel Harris: I thought you were.

(The reading of depositions continued, as follows:)

"By Mr. Mullen:

"Question: Is it correct that \$2500 was the maximum that could be received by Laburnum Corporation under the Spring Fork Development Company work?

"Answer: There was the erection of a schoolhouse added to that contract on which Laburnum would receive its five per cent of the cost of that building. They received only \$30.33 on the work that was done on the schoolhouse up to the date of cancellation.

"Question: How near was that work completed?

"Answer: Our cost after that amounted to \$3,338 and some cents.

"Question: And they were to receive a percentage on the cost if they had completed the work?

"Answer: Five per cent."

Mr. Mullen: Further this deponent saith not.

Colonel Harris: I suppose it is not necessary to read the affidavit.

Mr. Mullen: I don't think so.

page 1847 } Colonel Harris: The next one I have is the deposition of Mr. William A. Haslam.

(Off the record.)

Mr. Mullen: It is not necessary to read the certificate of the notary in the beginning.

Mr. Allen: Nor the notice or anything.

(The reading of depositions continued, as follows:)

"WILLIAM A. HASLAM,
the witness, having been first duly sworn, testified as follows:

"DIRECT EXAMINATION.

"By Mr. Mullen:

"Question: Will you please state your name, residence and business?

William A. Haslam.

"Answer: William A. Haslam, Evanston, Kentucky, manager of the Pond Creek Pocahontas Company's Kentucky Elkhorn Division.

"Question: How long have you been manager for that company?

"Answer: Since October of 1948.

"Question: And you have continued from that date to the present as manager?

"Answer: Yes.

"Question: It has been testified that the Pond Creek Pocahontas Company entered into a contract in 1948 with Laburnum Construction Corporation, a Virginia
page 1848 } corporation, for the construction of the coal preparation plant for the Pond Creek Pocahontas Company at that company's number one coal mine in Breathitt County, Kentucky. It is stated in article five of that contract, 'Pond Creek designates Mr. W. A. Haslam as its representative to act for it in connection with this agreement.' Are you the same W. A. Haslam as mentioned in that contract?

"Answer: I am.

"Question: Was the work under that contract completed?

"Answer: It was not.

"Question: It has further been testified that in 1948 Spring Fork Development Company entered into a contract with Laburnum Construction Corporation for the erection of certain dwellings and so forth at the same place. In that contract it is stated, 'The owner designates Mr. W. A. Haslam as its representative to act for it in connection with this agreement.' Are you the same W. A. Haslam as mentioned in that contract?

"Answer: I am.

"Question: Was that contract completed by the Laburnum Corporation?

"Answer: It was not.

"Question: Were you representing either the Pond Creek Pocahontas Company or Spring Fork Development Company in July and August, 1949, in connection with any
page 1849 } other contract that was doing work at the same location?

"Answer: I was.

"Question: What were they?

"Answer: Allen-Codell and the Codell Construction Company.

"Question: What work were those companies doing?

"Answer: The Allen-Codell Company was crushing stone and Codell Construction Company was constructing roads.

William A. Hastam.

"Question: Did the employees of the Allen-Codell Company go on a strike on or about July 12th, 1949?

"Answer: Yes.

"Question: Were they on strike on or about July 25th and 26th?

"Answer: I do not recall the exact date, but there was some controversy about this time.

"Question: Were you present at the location of this work on Tuesday, July the 26th, 1949?

"Answer: Yes.

"Question: Were you present on July the 27th, 1949?

"Answer: Yes, sir.

"Question: Do you have knowledge of Mr. Hart, representing the United Construction Workers, and certain men with him coming to the work on July 26th, 1949?

"Answer: I do.

"Question: What did they do when they arrived there?

"Answer: I wasn't at the tippie when Mr. page 1850 } Hart and the men arrived at the tippie. I was called to the scene immediately. When I arrived there the Laburnum Construction Workers had ceased working. Mr. Hart and the men with him were around the tippie. At the time I arrived one of the men with Mr. Hart had started up into the tippie. I called for him to come down, which he did, and I called Mr. Hart to one side and told him that the employees of the Pond Creek Pocahontas Company which I represented were members of the United Mine Workers and had nothing to do with the question that was being discussed at this time and I would appreciate it if he and the group of men which he represented would leave the premises of the tippie, that I was afraid that some of the pickets or some of the men with him due to their milling around the tippie, which was in operation, might get hurt due to machinery, moving machinery, or materials falling from the tippie.

"Question: Do you recall how many men were with Mr. Hart at that time?

"Answer: I didn't count them. I would judge in the neighborhood of twenty-five or thirty.

"Question: Did he comply with your request to remove them from the premises of the tippie?

"Answer: He did not immediately. Some five or ten minutes later I walked over to Mr. Hart and told page 1851 } him again that I would appreciate his moving the men from the premises of the tippie, if he did not

William A. Haslam.

comply that I was going to call Tom Raney, who is district representative of the United Mine Workers, Pikeville, Kentucky. He stated that he would immediately remove the men, that he did not wish to get in Dutch or get in bad with Mr. Raney, and he immediately moved the men from the vicinity of the tipple.

"Question: Did he then move them?

"Answer: He did.

"Question: Where did he move them to?

"Answer: They went over across the creek to the road.

"Question: Did they at that time establish pickets?

"Answer: They were over there at the road and due to the fact that Mr. Salvati, the Vice-President of operations, at that time was in Evanston, I immediately went to my office, which was a mile, approximately a mile, from the location of the tipple.

"Question: Did they have any picket signs?

"Answer: I didn't see any that day, but there were picket signs the next morning.

"Question: The next morning was the 27th?

"Answer: That's right.

"Question: Did you remain at this location from July the 27th to August the 2d?

"Answer: I was not. I went on my vacation page 1852 } on Wednesday—I assume it is July the 27th—and did not return until two weeks later.

"Question: You were there all day the 27th?

"Answer: I was.

"Question: Did you hear any threats made against the employees of Laburnum by Hart or by the men with him?

"Answer: I did not.

"Question: Did you note any violence during those days?

"Answer: I did not.

"Question: Did you see any firearms?

"Answer: I did not.

"Question: Did you hear any shots being fired?

"Answer: No, sir.

"Question: You were there in charge of the property of the Pond Creek Pocahontas Company, and in case of any violence or danger you would have intervened, would you not?"

Colonel Harris: There was an objection, you changed the question, and here is the changed question.

William A. Haslam.

(The reading of depositions continued, as follows:)

“Question: In view of your position with the Pond Creek Pocahontas Company, if any violence was taking place on the property of your company you would have had knowledge of it, would you not?

“Answer: Most likely.

“Question: Was there anything materially
page 1853 } different in the conduct of these pickets from
what you had noticed in other cases?

“Answer: Nothing different other than I was standing by as an outsider in this particular case and had no contact with the pickets other than mentioned above.

“Question: You mean you had no conversation with the pickets?

“Answer: That’s right.

“Question: But you were present there if anything had happened?

“Answer: That’s right.

“Question: Did you recognize any of the pickets as employees of Codell or Laburnum?

“Answer: State that again, please.

“Question: Did you recognize any of the pickets as employees of Codell or of Laburnum Company?

“Answer: I did not.

“Question: Among the pickets there could have been employees of Codell and Laburnum without your recognizing them?

“Answer: There could have been.

“Question: For Laburnum employees to continue their work, would they have to cross the pickets?

“Answer: Yes.

“Question: When did the Laburnum employees quit work?

“Answer: They had quit work when I arrived
page 1854 } at the plant. I don’t recall the hour but it seems
like to me right around one or two o’clock, somewhere in that neighborhood.

“Question: That was on what day?

“Answer: The 26th.

“Question: Did they work on the 27th?

“Answer: No, they didn’t work on the 27th. As well as I recall it was on the 27th Mr. Bryan and a few of the men came to work and then the men refused to work, stating that they were afraid to, and they went home.

William A. Haslam.

"Question: Did you hear any conversation between Burt Preston, stated to be the business agent for the carpenters' local union number 646, A. F. of L., and Mr. Hart?

"Answer: No.

"Question: Did you hear any violent argument between Mr. Hart and any of the representatives or employees of Laburnum?

"Answer: I did not.

"Question: I believe you have stated that you did not talk with any of the employees of Laburnum about this matter.

"Answer: I did not talk to them directly other than the one individual I asked why he wasn't working.

"Question: Going back to the morning of the 27th, was that when you talked to one man?

"Answer: On the 26th.

"Question: Did you talk to any of them on the 27th?

"Answer: If that was the morning that Mr. page 1855 } Bryan and the men came down the track, I talked to two individuals.

"Question: Did they tell you they were afraid to work?

"Answer: They told me—I asked them why didn't they go on to work and they said they were afraid to go to work.

"Question: Those two were the only ones you talked to?

"Answer: Yes.

"CROSS EXAMINATION.

"By Mr. Blanchard:

"Question: Mr. Haslam, you testified that after you talked to Mr. Hart he and the group with him withdrew to the other side of the creek away from the tipple. Is the spot to which they withdrew further or closer than the tipple to the camp of Laburnum Construction Company?

"Answer: It was at the camp.

"Question: How far was the camp of the Laburnum Construction Company from the tipple?

"Answer: I would judge 150 to 200 yards.

"Question: Is the tipple in sight from the Laburnum Construction Company camp?

"Answer: It is."

Mr. Mullen: Further deponent saith not.

The Court: Is that all?

Mr. Mullen: Yes, Your Honor.

William A. Haslam.

The Court: All right, Sheriff, you may adjourn court until tomorrow morning at ten o'clock.

(Whereupon, at 5:00 o'clock p. m. the court was recessed until 10:00 o'clock a. m., Thursday, February 8, 1951.)

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Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on February 8, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for the Defendants.

Also Present: Robert N. Pollard, Jr.

page 1857 } PROCEEDINGS.

(Roll call of the jury.)

The Court: Mr. Mullen?

Mr. Mullen: If Your Honor please, I wish to file as Defendants' Exhibit No. 64 a copy of the charter issued by the International Union, United Mine Workers of America to District 50, under date of the first of September, 1936. I have shown them to Mr. Robertson and he has no objection

(The document referred to was marked Defendants' Exhibit 64 and received in evidence.)

Mr. Mullen: I wish to file as Defendants' Exhibit No. 65 the Charter issued by United Mine Workers of America to

Jasper Newton Cundiff.

United Construction Workers Division under date of June 6, 1942.

(The document referred to was marked Defendants' Exhibit 65 and received in evidence.)

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JASPER NEWTON CUNDIFF

called as a witness in behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Please state your full name.

A. Jasper Newton Cundiff.

page 1858 } Q. Mr. Cundiff, where do you live?

A. Jeffersonville, Indiana.

Q. What business are you engaged in?

A. Contracting.

Q. Did you bid on 15 houses and a store for the Pond Creek Pocahontas Company, to be built at Evanston, Kentucky?

A. I did.

Q. What was your bid on each?

A. \$73,800 was the bid on the 15 houses. \$37,640 was the bid on the store.

Q. Did you get the contract?

A. I did.

Q. Did you accept the contract for both items?

A. No, sir. I accepted the contract for the 15 dwelling houses and rejected the contract for the store.

Q. Did you build those 15 houses?

A. I did.

Q. How long did it take you to complete them?

A. About 7½ months.

Q. You did complete them?

A. They are completed.

Q. Did you work skilled labor and common labor both on the job?

A. I did.

Q. Were your skilled labor members of any union?

A. A. F. of L. union.

page 1859 } Q. Were your common laborers members of any union?

Jasper Newton Cundiff.

A. Yes, sir; they were members of the United Construction Workers.

Q. Did you have any friction during the entire course of the work between the employees in the A. F. of L. union and the employees in the UCW?

A. I did not.

Q. It has been shown here that there was a plan to erect various buildings, and so forth, at the site of the work in Breathitt County near Evanston. Among them were 200 houses. Do you know how many of those houses have been built?

A. At the present time they have 40 houses completed ready for dwelling, with people living in them, and 19 frames that are for sale.

Q. They are for sale?

A. That is right. The frames are for sale and were put up for that purpose. They were put up for sale to the miners.

Mr. Mullen: The witness is with you.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Cundiff, when did you start the work that you have mentioned?

page 1860 } A. On the 15th day of November, 1949.

Q. Do you happen to know whether that was before or after this suit was started?

A. I don't know about the suit, sir.

Mr. Robertson: Stand aside.

RE-DIRECT EXAMINATION.

By Mr. Mullen:

Q. I want to ask you just one question. Of those 40 houses, you built only 15?

A. Right, sir.

Q. And the other 25 were built when you went there?

A. They were there when I went there.

Mr. Mullen: That is all.

Mr. Robertson: I have no further question.

Mr. Mullen: Stand aside.

(Witness excused.)

C. Howard Holt.

(Document shown to Plaintiff's counsel.)

Mr. Robertson: We don't object to that.

Mr. Fred G. Pollard: We would like to introduce as Defendants' Exhibit No. 66 a statement showing the alleged items of damages comprising the Plaintiff's claim of \$500,000.

(The document referred to was marked Defendants' Exhibit 66 and received in evidence.)

(Jury examining Defendants' Exhibit No. 66.)

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C. HOWARD HOLT

called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Fred G. Pollard:

Q. Mr. Holt, will you state your name, please?

A. C. Howard Holt.

Q. And your age?

A. Forty-one.

Q. Have you ever passed the state examination for certified public accountant?

A. I have.

Q. When did you pass that examination?

A. November, 1940.

Q. Are you now a practicing certified public accountant in the City of Richmond?

A. I am.

Q. With what firm are you associated?

A. Elkins, Durham & Kemp.

Q. Did you study at the University of Virginia?

A. I did. I completed my accounting training at the University of Virginia.

Mr. Fred G. Pollard: Your Honor, I submit
page 1862 } Mr. Holt as an expert on accounting matter.

By Mr. Fred G. Pollard:

Q. Mr. Holt, on the order of this Court has there been made

C. Howard Holt.

available to you for examination certain audit reports of Laburnum Construction Corporation?

A. There have.

Q. And have you made a condensed statement of operations of the Plaintiff for the years 1942 to 1948, inclusive?

A. I have.

(Document shown to Plaintiff's counsel.)

Mr. Robertson: If Your Honor please, we interpose the same objection we interposed in Chambers in the introduction of this type of evidence. We call attention to the fact that instead of going from 1940 for a ten-year period it starts in 1942.

The Court: The objection is overruled.

Mr. Robertson: Exception, if the Court please.

Mr. Fred G. Pollard: As Defendants' Exhibit No. 67 Laburnum Construction Corporation, condensed statement of operations for the years indicated.

(The document referred to was marked Defendants' Exhibit 67 and received in evidence.)

(Witness examining Defendants' Exhibit 67.)

Mr. Robertson: Do you have copies of these exhibit for us?
page 1863 } Mr. Fred G. Pollard: No, sir; we don't have a copy of that exhibit.

Mr. Robertson: Mr. Mullen, can you give us copies of those exhibits?

Mr. Mullen: As I understand it that is the only copy we have. We can have it made up for you.

Mr. Robertson: That is what I want.

Mr. Mullen: We will be glad to do it.

Mr. Fred G. Pollard: You have a copy of the other exhibit.

By Mr. Fred G. Pollard:

Q. Mr. Holt, I refer to Plaintiff's Exhibit 22, which is entitled "Laburnum Construction Corporation, Richmond, Virginia, construction record, May, 1942, to December, 1949." It shows a total for that period, a gross amount of work in the sum of \$20,253,965.49. Have you examined this exhibit?

A. I have.

C. Howard Holt.

Q. Is that a correct statement of the gross amount of business done by Laburnum Construction Corporation?

A. No, sir.

Q. What does your figure for the gross amount of construction for the 8-year period from 1942 to 1945 show on your condensed statement of operations?

A. \$14,345,731.79.

Q. How do you account for that difference?

page 1864 } A. This report includes work done by Laburnum Construction Corporation and Laburnum Pettijohn Associates, also work done by Laburnum Construction Corporation and Riggs Distillate Corporation, plus work done by Laburnum Construction Corporation and Virginia Mechanical Corporation.

Q. In other words, that exhibit shows some joint ventures and there is no breakdown to show which part of it is Laburnum and which part of it is the other parts of the joint venture?

A. That is correct.

Q. Does your condensed statement show that Laburnum Construction Company over the 8-year period made a net profit or a net loss on operations?

A. A net loss from operations.

Q. How much net loss?

A. \$46,533.12.

Q. In other words, an average net loss of approximately \$6,000 a year, a little bit less than \$6,000.

A. That is correct.

Q. When you take into consideration other income and other deductions, does it then over that 8-year period show a net profit or a net loss before income taxes?

A. That is correct.

Q. Which does it show?

A. A net income.

page 1865 } Q. Of how much?

A. \$66,481.04.

Q. Or approximately an income before taxes of \$8,000 a year over the 8-year period?

A. That is correct.

Q. Did Mr. Bryan tell you what the other income consisted of?

A. He did.

Q. What did he say it consisted of?

A. The significant items in there were rental from the use of the equipment and cash discount on purchases, and Labur-

C. Howard Holt.

num Construction Corporation's share of the net profit from joint ventures, or net loss if there was a loss.

Q. Did Mr. Bryan give you to understand that in connection with the rental income it was equipment that he owned or that Laburnum Construction Corporation owned, and when he was on a job he charged the owner rent for it?

A. That is correct.

Q. It was not a situation where he had equipment that he was not using and renting it from some other construction company?

A. He didn't mention that.

Q. Did he tell you what other deductions consisted of in the main?

A. Mostly interest on borrowed money, plus some contributions.

page 1866 } Q. Mr. Holt, I now refer to Plaintiff's Exhibit

No 21, which is a contract dated December 15, 1948, between Laburnum Construction Corporation and Spring Fork Development Company for the construction of 25 houses in Breathitt County, Kentucky. This contract contains a statement attached to it called, "Statement of Cost of Work," and it defines cost of work for which the contractor is reimbursable. Have you read this definition of what work the contractor is reimbursable for in this contract?

A. I have.

Q. Under this contract, is Laburnum Construction Corporation reimbursable for any of its General Office Expenses?

A. Not its home office expenses, no.

Q. And that is shown on your condensed statement as Administrative Expenses?

A. That is right.

Q. The company was not reimbursable for any of the Administrative Expenses?

A. No, sir.

Q. It has been alleged, Mr. Holt, that if the company had completed this contract, it would have earned a fee of \$534.19, that being 5 per cent of the gross amount due on the job. If this amount were 5 per cent of the total amount it would have taken to have completed the job, and that was the only fee on the job, would he have made a profit or a loss on the job?

page 1867 }

A. He would have had a loss on the job.

Q. Why do you say that?

A. Because the gross fee of 5 per cent does not take into consideration Administrative and Other Expenses which are

C. Howard Holt.

not charged directly to the job; and those expenses, for the year 1949, amounted to approximately 6.63 per cent. In other words, his ratio of indirect expenses amounted to more than the gross fee on the job.

Q. How have you determined what his overhead is for the year 1949?

A. By adding to Sales, as defined on the exhibit, Other Income.

Q. Why did you add Other Income to Sales?

A. Because, from the items which I was told that consisted of, it had a certain relationship to the operations and sales of the company, rental income—used on the job, and cash discount on purchases of material, and so forth.

Q. In other words, that has a direct relation to sales?

A. That is right.

Q. Did you then add Other Deductions to Expenses?

A. I did.

Q. Why did you do that?

A. Because the Other Deductions, I was told, were primarily interest expense on money borrowed for working capital, which has a direct relation to the operation.
page 1868 } Q. In other words, in your opinion, that is a direct operating cost?

A. That is right.

Q. So you determined your percentage of 6.63 per cent by adding Administrative Expenses and Other Deductions, and finding out what per cent that was of Sales and Other Income?

A. That is correct.

Q. I now refer to Plaintiff's Exhibit No. 34, which is a statement showing contracts with Pond Creek Pocahontas Company, Island Creek Coal Company, and various associated companies; and further, showing job profit or loss of Laburnum Construction Corporation on each contract.

I refer, Mr. Holt, to Job No. 322, wherein the total amount was \$265,370, and the profit is \$10,232.48. You have seen that contract, have you not, and see that the Plaintiff's fee for doing the work was \$12,000?

A. That is correct.

Q. Why is it that he shows a profit of less than \$12,000?

A. There were apparently some direct costs which were not reimbursable and charged against the job.

Q. And these direct costs are not taken care of in the Administrative Costs, are they?

A. No, sir.

C. Howard Holt.

Q. What per cent of the total job were these
page 1869 } direct costs for which the Plaintiff was not re-
imburshed?

A. Approximately .66 per cent.

Q. Two-thirds of one percent?

A. Two-thirds of one per cent.

Q. So his indirect expenses are 6.63 per cent, and his direct expenses for which he is not reimbursable are two-thirds of one per cent, and his total cost of doing the job is approximately 7-1/3 per cent, is it not?

A. That is right.

Q. If he undertook the work to complete the 25 dwellings on the basis of cost-plus-5%, in your opinion he would lose money?

A. That is correct.

Q. The plaintiff has claimed damages in the amount of \$319.67, being the fee that he says he would have earned at 5 per cent for work in connection with the construction of a schoolhouse. In your opinion, would he lose money if he undertook that job on the basis of cost-plus-5%?

A. He would.

Q. Is that for the reasons already stated?

A. That is right.

Q. The Plaintiff himself claims damages in the amount of \$250, being the fee which he says he would have earned at 5 per cent for putting asbestos shingles on these 25 houses. If he had done that work on the basis of cost-plus-
page 1870 } 5%, would he have lost money?

A. He would have.

Q. For the reasons already stated?

A. That is right.

Q. And is the same thing true of the fee that the Plaintiff claims, of \$1,250, which would be 5 per cent of the cost of the installation of a concrete foundation for the coal preparation plant for Mine No. 2? Would he have lost money on that job?

A. That is right.

Q. Suppose that the Plaintiff had actually had a valid, binding, and enforceable contract for other additional work in Breathitt County amounting to approximately \$542,500, on which it would have earned a fee of 5 per cent, or \$27,125, would it have made a profit on this job?

A. No, sir.

Q. Why not?

A. For the same reasons stated before.

C. Howard Holt.

Q. Suppose the Plaintiff could have undertaken this work for \$542,500 without increasing his overhead or administrative expenses over, say, \$1,000, or .2 of 1 per cent, would his overhead costs still have been in excess of 5 per cent?

A. They would have.

Q. In other words, for the year 1949, which is page 1871 } the year in which he claims that some of this work would be done, suppose he had done it all in that year and had increased his sales of approximately \$1,600,000 by \$542,500, and increased his administrative expenses only \$1,000, would his overhead still have amounted to more than 5 per cent?

A. It would have amounted to more than 5 per cent.

Q. That is not giving any consideration to any direct expenses for which he was not reimbursable, is it?

A. That is right.

Q. Now, refer again to Plaintiff's Exhibit 34, which shows a profit of \$58,000 on certain work done for Pond Creek Pocahontas, Island Creek Coal Company, and other companies. Is that a correct statement of the profit or loss of Laburnum Construction Corporation?

A. No, sir.

Q. Why isn't it?

A. It includes profit and loss of the Virginia Mechanical Corporation, as well.

(Document exhibited to Plaintiff's counsel.)

Mr. Robertson: If Your Honor please, this is a number of sheets. I suggest we take a recess so we can look at it and see whether we object to it or not.

Mr. Fred G. Pollard: Your Honor, I might say that that is a photostatic copy furnished Mr. Holt by the Plaintiff.

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page 1873 } Mr. Robertson: We have no objection, Your Honor, to the exhibit.

Mr. Fred G. Pollard: We would like to introduce as Defendants' Exhibit 68 analysis of gross profits for the year ended December 31, 1949, and it is stamped in the corner, Laburnum Construction Corporation. This exhibit consists of six sheets.

(The document referred to was marked Defendants Exhibit 68 and received in evidence.)

C. Howard Holt.

Mr. Fred G. Pollard: I would like also to introduce in evidence Defendants' Exhibit No. 69, stamped in the corner Laburnum Construction Corporation, entitled "Analysis of Gross Profit for the Year Ended December 31, 1948," and consisting of six sheets.

(The document referred to was marked Defendants' Exhibit 69 and received in evidence.)

(Jury examining Defendants' Exhibits 68 & 69.)

By Mr. Fred G. Pollard:

Q. Mr. Holt, I again refer to Plaintiff's Exhibit 34, which is a statement showing certain contracts with certain coal companies and shows the amount of work done on the various jobs and the profit or loss on these jobs. These figures have been referred to by the Plaintiff's counsel as net job profit. Are the figures on Exhibit 34, when taken into consideration with the analysis of gross profit for Virginia page 1874 } Mechanical Corporation, the same as the figures in the analysis for gross profit which has just been introduced in evidence?

A. They are.

Q. How are they classified in the analysis of gross profit?

A. As gross profit.

Q. So that actually the figures listed on Exhibit 34 are really the gross profit of the Plaintiff, are they not?

A. That is right.

Q. Exhibit 34 lists four jobs done by the Plaintiff in Breathitt County, Kentucky, namely Job 322 for a coal preparation plant, Job 323 for 25 dwellings, Job 326 for a telephone line, and Job 340 for a school house. Does the analysis of gross profit show a gross profit percentage on Job No. 322?

A. It does.

Q. What was that gross profit on that job?

A. 3.74.

Q. Percent?

A. 3.74 per cent, that is right.

Q. And when you take all four jobs together what was the gross profit of the Plaintiff on all of his work in Kentucky?

A. 3.9 per cent.

page 1875 } Q. On a basis of cost plus 5 per cent, how much additional work would the Plaintiff have to have undertaken in 1949 to have reduced his overhead to 3.9 per

C. Howard Holt.

cent, considering that he could do that without increasing his administrative costs at all?

A. Approximately \$1,200,000.

Q. In other words, unless the Plaintiff in 1949 was able to undertake an additional \$1,200,000 worth of work on the basis of cost plus 5 per cent, it couldn't have begun to show a profit, could it, on that work?

A. No, sir.

Q. Then how do you account for the fact that the Plaintiff did make a profit in 1949?

A. The gross profit on other jobs amounted to more than cost plus 5 per cent.

Q. That is, jobs outside of Kentucky?

A. That is right.

Q. Suppose the Plaintiff were to say "I could have undertaken an additional \$100,000 worth of work on the basis of cost plus 5 per cent without increasing my expenses and thereby earned an additional \$500,000 which would have been net profit," would this be a fallacious statement?

A. I believe it would, because in the first instance you are saying your net profit is the same as your gross profit, which isn't true. You have to take into consideration page 1876 } all of your expenses and all of your income before you can arrive at a net profit. Also, on that basis you would have to assume that if he hadn't done the last \$100,000 in 1949 he would have lost \$5,000, and you can continue to reduce on that basis until eventually you reach the point where your gross profit is less than your indirect expenses. You have to consider there all the expenses and all the income in arriving at net profit.

Q. It is your opinion that if the Plaintiff had undertaken to do the work on these first five items in 1949 it would have had a loss on that work?

A. That is correct.

Mr. Fred G. Pollard: Your witness.

Mr. Robertson: If Your Honor please, I have no questions of this witness at this time, but I would like to reserve the right to cross-examine if we deem proper to do so hereafter. My reason for saying that is that I want to confer with my own accountants and know what I am talking about before I embark upon the examination of a certified public accountant.

Mr. Fred G. Pollard: Thank you, Mr. Holt.

(Witness excused.)

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Alexander Hamilton Bryan.

page 1889 } (The following proceedings were had in open
court:)

Mr. Mullen: If Your Honor please, on the cross examination of Mr. Bryan he was asked as to the number of common laborers he had on the Solvay job at Hopewell on November 1, 1948, and he stated he would get that information and put it in the record. He was also asked as to whether there was any increase in wages at the time, both of which he was to put in the record. I would like to have that put in the record now.

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ALEXANDER HAMILTON BRYAN

recalled as a witness on behalf of Plaintiff, having been previously duly sworn, was examined and testified further as follows:

CROSS EXAMINATION.

By Mr. Mullen:

Q. Please state what was the number of common laborers you had on the job at the Solvay job on November 1, 1948, at Hopewell.

A. Approximately 37. If you want me to give you the exact number I will have—

Q. That is near enough.

A. It might have been 38 and it might have been 36.

Q. That is near enough.

page 1890 } Was or was not the wage increased at that
time?

A. The wage rate for common laborers was increased from 75 cents per hour to 90 cents per hour on June 4, 1948. There was no further increase in the rate for laborers.

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THOMAS ESTIL RANEY

called as a witness on behalf of Defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Mullen:

Q. Please state your full name.

A. Thomas Estil Raney.

Q. How old are you, Mr. Raney?

A. Forty-seven.

Q. Where do you live, Mr. Raney?

A. Pikeville, Kentucky.

Q. What is your work there?

A. I am a representative of the United Mine Workers of America, International Executive Board Member.

page 1891 } The Court: Do you gentlemen hear Mr. Raney? Talk just a little louder, Mr. Raney.

The Witness: Yes, sir.

By Mr. Mullen:

Q. Were you born in Kentucky?

A. Yes, sir. I was born in Laurel County, Kentucky; Pittsburg, Kentucky.

Q. Were you raised there?

A. I moved away from there when I was about three years old.

Q. Where did you go?

A. From there we moved to Tennessee, Westbourne, Tennessee, where I stayed until I was 16 years old and moved back to Kentucky.

Q. How long have you been stationed at Pikeville?

A. Approximately 16 years.

Q. During all that time has your job been with one of the unions?

A. Yes, sir; all during that time I have been a representative of the United Mine Workers of America.

Q. How long have you been a member of the International Executive Board?

A. Since August 1, 1942.

Q. Are you a member of the United Mine Workers of America?

page 1892 } A. Will you state the question again, please?

Q. Are you a member of the United Mine Workers of America?

Thomas Estil Raney.

A. Yes, I am.

Q. Are you a member of District 50 United Mine Workers of America?

A. No, sir; I am not.

Q. Are you a member of the United Construction Workers?

A. No, sir.

Q. Do you as a member of the International Executive Board have any jurisdiction over the United Construction Workers or over District 50?

A. None whatsoever.

Q. Can you give any orders to the men either in District 50 or United Construction Workers?

A. No, sir.

Q. Do you give any orders to them?

A. No, sir.

Q. Did you ever give any orders to Mr. W. O. Hart with regard to his effort to organize the Laburnum Construction common laborers at Evanston, Kentucky?

A. I never gave any orders to Mr. Hart at the Laburnum Kentucky job or any other job anywhere in the country.

Q. Did you have any knowledge or information page 1893 } in regard to his organizing, attempting to organize those laborers?

A. I did not know that the Laburnum job existed.

Q. How long after these occurrences did you learn about them?

A. Approximately I believe about three weeks after the strike had occurred I first heard about it.

Q. Were the United Mine Workers members working at the Pond Creek Pocahontas mine connected in any way with the strike there?

A. No, sir.

Q. You have your office whereabouts in Pikeville?

A. It is located in the Soward Building on Main Street in Pikeville.

Q. Does Mr. Hunter have his office there?

A. Yes, sir; in the same building.

Q. Are your offices connected?

A. They are not; no, sir.

Q. Have you ever occupied the same offices?

A. No, sir; we have not.

Q. Who employed Thomas Davis?

A. In so far as I know, it is District 50, and I am not sure about that, possibly the United Construction Workers. I don't know exactly.

Thomas Estil Raney.

Q. Is he subject to your orders or not?
page 1894 } A. Absolutely not; no, sir. I believe Mr. Davis' office is in Knoxville, Tennessee.

Q. Has he any office in the United Mine Workers?

A. Yes, sir; he holds a position as a representative of either District 50 or the Construction Workers, possibly both.

Q. I don't know whether you get my question: Does he hold any office in the International Union, United Mine Workers of America?

A. No, sir; he does not.

Q. Does District 50 pay any part of the dues collected from its local unions to the International Union, United Mine Workers of America for District 50?

A. Does District 50 pay dues?

Q. Pay any part of the dues it collects.

A. I don't think they do, sir. I don't think so.

Q. How about United Construction Workers?

A. I don't believe they pay direct. I am not so sure. I don't know just how they handle it.

Q. You do not handle any of the finances?

A. I don't have anything to do with the finances whatsoever.

Q. You know nothing about that?

A. I would have no way of knowing, sir.

Q. Mr. Raney, does the United Mine Workers
page 1895 } class the American Federation of Labor unions as dual organizations?

A. No, sir.

Q. Is it a violation of the obligation taken by members of the United Mine Workers of America also to join the A. F. of L. union?

A. There is no violation in so far as I know. We have a lot of men, a lot of members who belong to both unions and work on the same job.

Q. The United Mine Workers at times has been affiliated or not with the American Federation of Labor?

A. Yes, sir; that is correct.

Q. What is the principal industry in eastern Kentucky?

A. There is no other industry except the coal industry in eastern Kentucky, with the exception of the railroads which are located in that area.

Q. Are all of the mines in eastern Kentucky organized under unions?

A. All of the larger mines are organized. However, there

Thomas Estil Raney.

are some small truck mines, as we term truck mines, that are not organized.

Q. Do you know a man named Frank Dixon, who represents himself to be some high official in the A. F. of L. working either out of Louisville or out of Cincinnati?

A. No, sir; I do not know that there is such a person.

Q. You never met such a person?

A. I have never met such a person.

page 1896 } Q. Have you ever sent any message to a Frank Dixon that you wanted to meet and confer with him?

A. No, sir; I did not because I did not know that there was such a man as Frank Dixon, until after I read it in the newspapers.

Q. Have you ever requested a meeting with Frank Dixon to see if you could get together on conditions in eastern Kentucky and if you could, to see if he would prevent witnesses from coming here to testify?

A. Absolutely not. I would have more sense, I hope, than to attempt to interfere with a witness, and I would not give such a man as that power. I would have more sense, I hope, than to do that, sir.

Mr. Mullen: The witness is with you.

CROSS EXAMINATION.

By Mr. Robertson:

Q. Mr. Raney, you are not related by blood or marriage to John L. Lewis, are you?

A. No, sir; not as far as I know.

Q. How many days have you sat in on this trial?

A. I think this is the third day.

Q. During those three days you have heard all the testimony here?

A. Not all of it. I have been out of the room a few minutes at a time, but most of it I have heard, yes, sir.

page 1897 } Q. You have lived in Pikeville how long?

A. Sixteen years, approximately.

Q. How big a town is that?

A. Pikeville is, I believe, the highway signs I noticed after the last census was 7800.

Q. Is that the county seat of Pike County?

A. Yes, sir; it is.

Thomas Estil Raney.

Q. How close is Pike County to Breathitt County?

A. Are you speaking of the county seat alone or are you speaking of the county borders?

Q. I am speaking of how close is the nearest county line of Pike County to the nearest county line of Breathitt County, if you know, approximately.

A. Approximately 80 miles, more or less.

Q. How close is your home to the home of the former Sheriff Conway, of Pike County?

A. We live in the same block. I believe there are two or three houses between us.

Q. I believe he has been shot and killed within the last six or eight months, hasn't he?

A. I believe it was some time in early July when he was shot and killed, yes, sir.

Q. The circumstances were that he was shot and killed at night?

A. That is right, he was shot and killed at
page 1898 } night by bootleggers.

Q. He had gotten a call to go out of his house and as he went out and got in his automobile somebody shot him in the back, didn't they?

A. Yes, sir. He was fixing to get in a truck sitting in front of his house when they killed him.

Q. Right after that you heard somebody run by your house, didn't you?

A. No, sir; that isn't true. My wife heard somebody run by the house. She saw them. She didn't hear them. She saw them. My wife was the third person to him, sir.

Q. How many floors are there to the Soward Building?

A. I believe the first floor is occupied with stores, the second is occupied with offices and the third. There are three floors.

Q. How many different rooms, if you know, are there on the second floor?

A. Well, I have never counted them. I would judge 14
rooms.

Q. How many offices do you occupy?

A. We have five rooms.

Q. And how long have your offices been on that second floor?

A. I believe that building was built 2½ years ago, ever since it was built. We moved in there first.

page 1899 } Q. How long has the United Construction
Workers had offices in that building, if you
know?

Thomas Estil Raney.

A. I don't remember just what time of the year it was that the Construction Workers first moved in. We were there first and I don't know just how soon afterwards they moved in.

Q. They are now on the second floor, aren't they?

A. Yes, sir; they are now. They originally were on the third.

Q. How many offices do they now occupy on the second floor?

A. Two.

Q. How close is their closest office to your closest office to them?

A. There is a wall between us.

Q. They are next door?

A. Yes, sir; next door.

Q. Do you know David Hunter?

A. Yes, sir.

Q. Do you call him by his first name?

A. Yes, sir; I call him by his first name.

Q. Does he call you by your first name?

A. Yes, sir; he does. Everybody calls me by my first name.

Q. May I call you by your first name?

page 1900 } A. You may, yes, sir.

Q. Do you know William O. Hart?

A. Yes, sir.

Q. Do you call him by his first name?

A. Yes, sir; I do.

Q. Does he call you by your first name?

A. Yes, sir.

Q. Do you know Tommy Davis?

A. Yes, sir.

Q. Do you call him by his first name?

A. That is right; yes, sir.

Q. Does he call you by your first name?

A. I believe he does; yes, sir.

Q. You are in and out of your office practically every day, aren't you?

A. No, sir. There are periods of times when I am away as much as 30 days at a time and sometimes six weeks.

Q. It was one of those times, I believe, when I was out in Pikeville taking depositions in November?

A. In November. That could be so. I was in West Virginia at that time and had been for some two or three weeks.

Q. And I was unable to get acquainted with you.

Thomas Estil Raucy.

A. That is possibly so, if you were there. I didn't know you were there. That is possibly so.
page 1901 } Q. When you are in Pikeville do you go to your office every day?

A. Yes, sir; I think so. Occasionally maybe not. Most of the time I do, yes, sir.

Q. Does David Hunter go to his office practically every day, or do you know?

A. I don't know.

Q. How often do you see him, would you say, in the Soward Building?

A. Well, I guess, not knowing, it would be purely a guess, when I am there two or three times a week.

Q. The offices that he occupies as the representative of the United Construction Workers are also the same offices which he occupies as the representative of District 50, aren't they?

A. Yes, sir; yes, sir.

Q. How does it happen that you and David Hunter all get your mail out of the same post office box, the United Mine Workers and United Construction Workers and District 50?

A. The post office box 50 has been the box for the United Mine Workers to my knowledge for 16 years, and when Mr. Hunter first come to Pikeville it was difficult then and is now to get a post office box. It is a small post office. They don't have enough boxes to take care of their people. So Mr.

Hunter asked if he could use our box, and I told
page 1902 } him he could.

Q. That has been continuing how long?

A. Every since that office has been established, 2½—I suppose two or three years, something like that, somewhere in between two and three years.

Q. To use a colloquial expression, you all use the same hole to put your mail in and to take it out.

A. That is correct, and so far as I know that is true. I don't know whether they have another box or not.
page 1903 }

Q. You became a member of the International Executive Board of United Mine Workers of America in 1942, didn't you?

A. That is right, yes, sir.

Q. At a salary of \$1,000 a month?

A. At that time, no, sir. The salary was \$500 a month. It is now \$1,000 a month.

Q. You were appointed by John L. Lewis, weren't you?

Thomas Estil Rancy.

A. That is correct, and approved by the International Executive Board and the International Convention.

Q. You take your orders from John L. Lewis?

A. Yes, sir, that is correct.

Q. You make your reports to John L. Lewis?

A. Such reports as I make, yes, sir. I have never made a report to him yet.

Q. Just tell us what the general nature of your duties is at Pikeville, Kentucky, whereby you earn \$1,000 a month?

A. The work in Pikeville, Kentucky, I supervise the District No. 30 office. I have 8 employees, District Representatives, working out of that office. It is their job, and mine to see that it is done, to supervise and to service all Local Unions in District No. 30, something over 200 Local Unions, large and small. It is for the purpose of settling any and all disputes, if possible, between the management and labor of the mines; also for contract enforcement within the mines, and supervising and directing the work of organizing new
page 1904 } mines within that territory.

Q. I think you said you knew William O. Hart, and called him by his first name?

A. Yes, sir, I have known Mr. Hart for approximately 14 or 15 years, maybe.

Q. Was he, in the summer of 1949, living in Pikeville?

A. No, sir, I don't think he was.

Q. Have you seen him in and out of the Soward Building there fairly often?

A. I see him occasionally, yes, sir. I wouldn't call it fairly often, but I do see him occasionally.

Q. Among your duties is to help to organize the miners, isn't it?

A. My job is to direct the work of organization in that District.

Q. You are a sort of supervisory official in that territory?

A. That is right, yes, sir.

Q. So what you are trying to help the accomplishment of is to organize the unorganized?

A. That is correct, yes, sir; if there is any unorganized in the section, that is my job, to try to organize and to help do so.

Q. When was it that you first heard of this Laburnum trouble in Breathitt County, Kentucky?
page 1905 } A. Approximately three weeks, more or less, after it occurred.

Q. It occurred on July 26. One week would be August 2.

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Two weeks would be August 9. Three weeks would be August 16. You didn't hear about it until about the middle of August?

A. I don't think I did, no, sir. I am not sure, either way, what the date was.

Q. You tell the jury that although you and David Hunter were getting your mail out of the same Post Office box and occupied adjoining offices on the second floor of the same building, and knew each other to call each other by first name, and you saw him in and out of the building in the way you have described, your testimony to the jury is that you didn't mention that Laburnum trouble to him and didn't know anything about it until three weeks after it occurred?

A. That is correct, yes, sir. I was on vacation most of that time, sir. I wasn't even there. I was on a fishing trip.

Q. When you meet him in and out of the office, you don't discuss District 50 affairs with him?

A. Sometimes we do, yes, sir, but most of the times when we do discuss them, it is in the office, not out in the hallways.

Q. But it would be the exception rather than
page 1906 } the rule when you would discuss the affairs of
District 50 with him?

A. In the hallways, yes, sir; but in the office, whenever he has something to discuss, he comes in and talks to me about it.

Q. How often do you reckon he is in and out of your office discussing the affairs of District 50?

A. He may have come in once a week, on an average, something like that.

Q. Why does he come in there?

A. To talk to me about the organization affairs, and to get my advice.

Q. To get your advice?

A. Yes, sir.

Q. And to get your help in that way?

A. If he needs it, yes, sir.

Q. You help him whenever it is necessary?

A. Whenever it is necessary, and he asks for it, I help him, yes, sir.

Q. That is one of the duties of your job?

A. That is correct.

Q. Is that the same situation that prevails between you with reference to the United Construction Workers?

A. Well, yes, sir. His work is in the United Construction Workers principally, in so far as I know. What he does in District 50, I don't know too much about it.

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Q. I believe that also you were there when page 1907 } David Hunter came out there as accounting director of Region 58 of both United Construction Workers and District 50, weren't you?

A. You mean when he first came there?

Q. Yes.

A. I believe that is correct, yes, sir.

Q. You helped him all you could in getting his work set up out there, didn't you?

A. Yes, sir; I assisted him in securing an office and a place in which to move. That is all I did, yes. I remember that very clearly, that I did do that.

Q. And you went around over the territory with him to introduce him to the people around through the region, didn't you?

A. I did not, no, sir.

Q. Have you ever taken any trips with him?

A. Yes, sir; I have.

Q. I will come to those a little bit later. You might be thinking about them.

I believe John L. Lewis also appointed the secretary-treasurer of District 30, didn't he?

A. That is my understanding that he did, yes, sir.

Q. District 50 is a provisional district, isn't it?

A. I think District 50 is what they call a constitutional district.

page 1908 } Q. I know. You are talking about Section 20 of the Constitution, but it is also a provisional district, isn't it?

A. I don't know too much about the administrative affairs of District 50. I have nothing to do with it in my work.

Q. But you do know that John L. Lewis appoints his brother, A. D. Lewis, at the head of the District, don't you?

A. No, sir; I don't know that.

Q. You don't know that?

A. No, sir. District 50 was established I don't know how many years before I became a member of the International Executive Board. How it was established I know nothing about.

Q. As a member of the International Executive Board, that knowledge has never come to your information?

A. I was not a member of the Board at that time, and therefore it would not have come to my attention.

Q. I say, but since you have been a member of the Board

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now going on nine years, that information has not even to this date come to your knowledge?

A. About the appointment, how it was appointed and when? No, sir, that isn't so. It did not come before me. On several occasions the affairs of District No. 50 have been reported orally by the director, Mr. A. D. Lewis, to the page 1909 } Board, and discussed at the Board meetings.

Q. I suppose you don't know, then, that Mr. Lewis appointed his daughter, Miss Kathryn Lewis?

A. I do not, sir.

Q. To a position either with District 50 or with United Construction Workers.

A. I do not know how Miss Lewis became secretary-treasurer of District 50. I have no knowledge whatsoever of it.

Q. That never came to your knowledge as a member of the Executive Board?

A. It has never come to my knowledge in any way, before I was a member of the board or since.

Q. And you don't know it at this moment?

A. I only know what I read in the paper, and in their journal. I have nothing to do with the financial affairs of the organization.

Q. Mr. David Hunter is a man of high character, is he not?

A. In so far as I know, he is, yes, sir.

Q. If he made a report regarding any of the people working for him or under him, you would have no reason to question the correctness of the report?

A. That of course depends, sir.

Q. Sir?

page 1910 } A. That depends. That depends entirely on the circumstances.

Q. But you would expect him to tell the truth in his report?

A. I would expect any one to tell the truth at all times.

Q. Do you remember a strike where there was a lot of trouble over in Prestonsburg in September, 1949, that involved the Hughes Motor Company over there?

Colonel Harris: We object to that as immaterial and irrelevant to any issues in this case. It is going outside of the transactions on which the Plaintiff bases its notice of motion for Judgment.

Mr. Robertson: It is the same objection which the Court

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has ruled on time and time again, and the purpose will become apparent in the next question.

The Court: The objection is overruled.

Colonel Harris: We reserve an exception.

The Witness: Will you state your question, please?

Mr. Robertson: Read it, please.

(The pending question was read by the reporter.)

The Witness: I remember a strike occurring there. I don't remember any trouble that you refer to.

By Mr. Robertson:

Q. Do you remember going over there with page 1911 } David Hunter and calling off the pickets?

A. No, sir; I do not.

Colonel Harris: No, sir; I do not. May we have a continuing objection to this entire line of questions and the reservation of an exception to each one?

The Court: You may.

By Mr. Robertson:

Q. Rainier Garage was involved in that same controversy in September, 1949, wasn't it?

A. I don't know what garages were involved, sir. I don't know.

Q. I will ask you if you didn't go to Prestonsburg in September, 1949, with David Hunter and call off the pickets both from the Hughes Motor Company and from Ranier's Garage?

A. No, sir; that is not so.

Q. I will ask you if when David Hunter came to Pikeville as acting regional director of Region 58, you didn't take him over the territory and introduce him to the boys?

A. I took him around the office and introduced him to the district representatives.

Q. Didn't you also take him out through the country?

A. No, sir; I did not.

Q. You said that you did not know Frank Dixon personally?

A. That is correct.

Q. Did you know that there was such a person?

A. I did not, not until I read it in the news- page 1912 } papers and this trial.

Q. You deny, then, that you either directly or indirectly sent word to Frank Dixon about filling him so full

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of holes that all the sand in the Big Sandy River wouldn't fill him up?

A. I deny that and if such statement was made here, it was a lie, by any one, Frank Dixon or anyone else.

Q. You deny that you directly or indirectly sent him a message to see if you couldn't get together so you all would leave him alone and you would leave each other alone and work in harmony in eastern Kentucky?

A. I deny that, sir, because there is no A. F. of L. within my section of eastern Kentucky. One little local union of carpenters, possibly 30 or 40 people.

Q. And you deny that you ever sent him a message directly or indirectly that unless he acceded to any of those things, you were going to kick his ass out of eastern Kentucky?

A. I deny that I know such a man as Frank Dixon, as I have previously said in the record. I deny ever sending him any kind of word at any time any place and by any one.

Q. And you never sent it to any other representative of the A. F. of L.?

A. I sent it to no one.

Q. Have you ever heard of any other instances page 1913 } in Eastern Kentucky where the United Construction Workers ran people off their jobs?

Colonel Harris: We still have the continuing objection and exception to that line of questions, Your Honor.

The Court: Very well.

The Witness: Did you say answer?

The Court: Answer.

The Witness: No, sir.

By Mr. Robertson:

Q. You never knew of a single one?

A. I don't know of any instances where they ran any one off. From my own personal knowledge you are asking? I do not know.

Q. I mean any kind of knowledge.

A. I have no knowledge of any one being run off by any organization in eastern Kentucky.

Q. I am just confining myself at the moment to United Construction Workers.

A. The United Construction Workers or any other organization.

Q. You don't know of anybody being run off by District 50?

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A. No, sir; I do not.

Q. And you do not know of anybody being run off the job of course by the United Mine Workers of America?

A. No, sir; I do not. That is correct.

page 1914 } Q. You never heard of any violence being used in Kentucky, I suppose?

A. No, I have known of a lot of violence in Kentucky. I have had it used against me by the coal company gun thugs when they dumped me out into the state of Virginia across the line.

Q. They dumped you in Virginia or out of Virginia?

A. In Virginia, across the Virginia line. After they beat me up, sir.

Q. But you have never used any violence on anybody else, have you?

A. No, sir; I have not.

Q. You are not going to use any on me, are you?

A. I hope not (laughter).

Q. It looked a little like you got a little mad a few minutes ago—

Colonel Harris: We object to the remark.

Mr. Robertson: I withdraw it, Colonel.

By Mr. Robertson:

Q. Now, Mr. Raney, I will ask you if it isn't a fact that you were in Frankfort, Kentucky, with David Hunter on January 12, 1940, to help out in organizing the unorganized.

A. Organizing the unorganized in Frankfort?

Q. Yes.

page 1915 } A. No, sir. I went to Frankfort, Kentucky one time, on two occasions, with Dave Hunter, and we visited I believe it was Commissioner Kech's office in the State Highway Department, and that is the only time I was ever there. It was not to organize the unorganized.

Q. Let's see, then, if he has it substantially correct. I am referring now to the answer of District 50 United Mine Workers of America to summons of the Plaintiff to answer interrogatories, Exhibit 4-1, which is a weekly report for the three weeks ended January 7, 14, 21, 1950, report dated January 23, 1950—

Mr. Mullen: Your Honor, we object for the same reasons heretofore stated and recorded.

The Court: The objection is overruled.

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Mr. Harris: We reserve an exception.

By Mr. Robertson:

Q. The report is addressed to Mr. A. D. Lewis, Chairman of Organizing Committee, District 50, UMWA and UCW, United Mine Workers of America, signed "Fraternally yours, David Hunter, Acting Director, Region 58," for Thursday, January 12, 1950, as follows:

"I had an appointment in Frankfort, Kentucky with Mr. John A. Kech, Highway Commissioner, relative to increasing the labor rates from 80 cents to \$1.00 within this area. Mr. Tom Raney, International Board Member, was page 1916 } in Lexington, Kentucky and went with me to meet Mr. Kech. Due to illness Mr. Kech was home. Therefore we met with the Deputy Commissioner. The Deputy Commissioner felt sure the labor rates would be increased to some extent. Up to date not one of the contractors have filed a complaint against the rates that we have been able to squeeze out of them above the bid-in rate for this area. He also stated that the Highway Department allowed the contractors above the 80-cent bid-in rate set by the Department when work was to be done within this region. I am expecting to hear from Commissioner Kech when he returns to this office."

Is that report by Mr. Hunter substantially correct or substantially wrong?

A. He is referring to the tip to Mr. Kech and I told you I was there with him in the office.

Q. He was out there as the agent of District 50, wasn't he?

A. Oh, yes, sir. Yes, sir; he was.

Q. He was out there as the agent of the United Construction Workers, wasn't he?

A. Yes, sir.

Q. You and he were out there together?

A. That is correct.

Q. You were out there as a member of the International Executive Board of the United Mine Workers of page 1917 } America, weren't you?

A. That is correct, yes, sir.

Q. You were helping him to put over his deal?

A. I was helping him or attempting to help him to get the rates of labor on this job increased when they made their contract bids. That is correct, yes, sir.

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Q. In other words, you as International Executive Board member and he in his capacity were jointly working to get that advance?

A. I don't know what you would call jointly working. I don't know how you would term that. But Mr. Hunter did request me to go there with him. He was a new man, a stranger. I knew Mr. Kech and the other authorities in the State, so I went along with him to help him.

Q. That was what you did, following out what you generally did whenever you could be of assistance?

A. Wherever I could be of assistance to District 50 and the Construction Workers when asked to do so, I did it, and to all other labor unions, sir.

Q. Did Mr. Lewis know about that?

A. I don't know whether he does or not. I never told him.

Q. Did he ever ask you about it?

A. No, sir; he never asked me about it.

Q. Did he ever tell you not to do it?

page 1918 } A. No, he never told me not to do it.

Q. Did you call him by his first name?

A. No, sir; I did not.

Q. Does he call you by your first name?

A. Yes, I believe he does.

Q. Did you meet him when he was down here in Richmond about a week or ten days ago?

A. No, sir; I wasn't here in town then. As far as I know, Mr. Lewis doesn't know that I am here today.

Q. All he knows is what he reads in the paper?

A. Well, I wouldn't say that, but I do know that I don't think he knows I am here today. If he does I don't know anything about it.

Q. Now I will ask you if on Saturday, March 25, 1950, you weren't in Hazard, Kentucky, with Mr. David Hunter.

A. On what date was that, sir?

Q. Saturday, March 25, 1950.

A. I don't remember the dates, but I was there with Mr. Hunter on two occasions, yes, sir. I don't know what dates. Perhaps that could be the date.

Q. What was the occasion of those two times you were there?

A. One time I remember distinctly. The other I don't. Mr. Hunter asked me to go over with him to meet International Representative Reynolds, who was in charge of
page 1919 } the Hazard office in District 30, and to ask him if I could talk Mr. Reynolds into assisting him

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and helping him to organize a job at Toner, Kentucky.

Q. Excuse me, had you finished?

A. Sir?

Q. Had you finished?

A. Yes.

Q. And what you were doing at the time we have already talked about when you were in Frankfort Kentucky and on these other occasions is just generally what you have been doing through all the 16 years you have been in that territory, isn't it?

A. No, that isn't so.

Q. What is the difference?

A. The difference is there has not been a construction Workers all those 16 years and there has not been a District 50.

Q. You have been helping them out ever since District 50 has been out there, haven't you?

A. Ever since the Construction Workers has been in there. District 50 didn't have an office in there until it was established at this time.

Q. But ever since they moved in, you have been helping them in the same way?

A. Yes, sir; whenever they have asked me to page 1920 } do so, I have helped them.

Q. In any way you could?

A. In any way I could do so, yes, sir.

Q. I am referring now to Exhibit 4-8 with the answer of District 50 United Mine Workers of America to summons of the Plaintiff to answer interrogatories, and that also is a report by David Hunter dated March 23, 1950, to Mr. A. D. Lewis, Chairman of Organizing Committee, District 50, UMWA and UMW, United Mine Workers of America, Washington 5, D. C., weekly report for two weeks ended March 11 and 18, 1950, signed—I will stop before I read it—signed "Fraternally yours, David Hunter, Acting Director, Region 58," and the part of the report to which I refer is for Saturday, March 18, 1950.

Mr. Mullen: We object to that, Your Honor, for the reasons heretofore stated with regard to anything out of those interrogatories.

The Court: The same ruling.

Mr. Mullen: Exception.

Mr. Robertson: I made the wrong reference. I wanted a report about William O. Hart. If you will scratch that all

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out I will go to the next one. I referred to the wrong thing.

Mr. Allen: Your objection will apply to the page 1921 } the next one?

Mr. Mullen: Yes.

By Mr. Robertson:

Q. I refer to Exhibit 4-9, which is with the answer of District 50, which is Mr. David Hunter's report to Mr. A. D. Lewis in those two capacities, dated April 7, 1950, weekly report for the two weeks ended March 25 and April 1, 1950, and the part to which I refer is for Saturday, March 25, 1950, as follows:

"In Hazard, Kentucky, with International Board Member Tom Raney. We met Mr. Ed Reynolds in charge of the Mine Workers office in Hazard. We explained to him the program I have worked out relative to organizing the unorganized in that area. He pledged his fullest cooperation in the future. We are not asking the Mine Workers to do our work for us. However, when we asked for a push here or there, we were not getting it. Mr. Raney is of the belief that Mr. Reynolds in the future will cooperate."

A. What were you asking me about the report?

Q. What do you mean about a push here and there that you weren't getting?

A. I don't know what he means about a push. I never heard the expression used before. I couldn't tell you what he means.

Q. You wouldn't have any idea what that meant?

A. No, sir; but I can answer the question about page 1922 } what I was doing there if you would like.

Q. Answer that, if you will.

A. I did a few moments ago. I will repeat again, that I was there at the request of Mr. Hunter to introduce him to Mr. Reynolds and to ask him if he would give him assistance in organizing the Toner job.

Q. But you have no idea what Mr. Hunter meant when he said: "When we asked for a push here or there we were not getting it"?

A. No, sir. I would suggest that you ask Mr. Hunter. I don't know what Mr. Hunter meant by that. I would not be able to know.

Q. "Mr. Raney is of the belief that Mr. Reynolds in the

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future will cooperate." How had he failed to cooperate before that?

A. I don't know that he had failed to cooperate. I don't know that he had.

Q. You didn't put the heat on him out there at all, did you?

A. I would have no authority to put heat on an international representative, sir. No, I did not.

Q. I don't know who Mr. Reynolds is. I am just asking, you did not put the heat on Mr. Reynolds on that trip, did you?

A. I explained to you that Mr. Reynolds was page 1923 } an international representative before, in answer to one of your questions.

Q. You didn't put any heat on him?

A. No, sir; I didn't put heat on him. I have no authority to put the heat on any one.

Q. You know what I mean by putting the heat on.

A. I don't know that I do.

Q. I mean, threaten him a little or intimidate him a little.

A. You mean bodily harm to a fellow worker that I work with? If that is what you mean, definitely no, sir.

Q. I mean spiritual harm, then.

A. I don't know what you mean by that.

Q. All right.

A. Certainly I put no heat on him. I don't know what you mean by heat but I didn't put any on.

Q. You mean I don't know what I mean by putting the heat on anybody?

A. I know what I would term it. I don't know what you would term it.

Q. What would you call it?

A. I would term it putting the heat on a person to put pressure on him where you had a club over him to use your influence over him or your authority.

Q. That is what I mean.

page 1924 } A. Well, I did not do that. I did not do that.

Q. I will ask you whether on Friday, June 23, 1950, you were in Lexington, Kentucky with David Hunter?

A. What was the date again, sir?

Q. Friday, June 23, 1950.

A. I was there with him on the two occasions, but again I don't remember what date or even what season of the year that it was.

Q. Maybe this will refresh your memory. I am referring

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now to Exhibit 4-17 with the answer of United Mine Workers that I have mentioned, and to report dated June 27, 1950, from David Hunter, Acting Director, Region 58, to Mr. A. D. Lewis, in his two capacities, the weekly report for the week ending June 24, 1950, and I refer to Friday, June 23, 1950, as follows:—

Mr. Mullen: The same objection.

The Court: Same ruling.

Mr. Fred G. Pollard: The same exception.

By Mr. Robertson:

Q. "At the request of Mr. Tom Raney, I was in Lexington, Kentucky for the purpose of meeting with the President of District 30, Sam Caddy, U'MWA, to obtain the support from the Hazard, Kentucky, office in organizing a large construction job at Toner, Kentucky. However, Mr. Caddy was ill and could not attend. Also Mr. Raney was late in page 1925 } arriving and had to leave early the next morning for Hillsboro, Kentucky. Had I not been invited to attend a dinner in honor of Mr. Laval Mitch, who is being transferred from District 30 to the Washington office, my trip would have been a total loss. With the exception of Mr. Sam Caddy, Mr. Tom Raney, and Mr. Joe Davis, the entire staff of District 30 was present at the dinner."

Does that refresh your memory?

A. Yes, sir; it does. It does.

Q. How did it happen that you asked David Hunter to go there?

A. Mr. Laval Mitch, attorney for District 30, who had been an employee for some considerable time, and we all naturally like him, was being transferred or moved to a better job in Washington. The District representatives all got together to give him a little farewell party, and we went there for that purpose. I asked Mr. Hunter to go along with me, to join us in the party.

Q. While you were out there you were going to see if you could do anything about organizing a large construction job at Toner, Kentucky?

A. I don't remember that we discussed that at that time, but I did as I told you a minute ago discuss it with Mr. Reynolds at a later date in his office.

Q. I believe you said that you take your or-
page 1926 } ders from John L. Lewis?

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A. That is correct, yes, sir.

Q. Does he call you by your first name?

A. Yes, sir; I believe he does.

Q. Does he call you Tom or Tommy or what?

A. Tom, I believe.

Q. If he says "Tom, I would appreciate it if you would go out to Hazard and see so and so," you would be pretty apt to go, wouldn't you?

A. Yes, sir.

Q. You would regard that as a nice way of giving an order, wouldn't you?

A. I would, yes, sir.

Q. When you said to David Hunter, "David, I would like for you to go out to that dinner with me, and while we are out there we will just see about organizing this job out here at Toner," you would expect him to go, wouldn't you?

A. No, sir; not necessarily.

Q. You wouldn't?

A. No, I have no right to give him orders.

Q. But he went.

A. He went along to attend the party.

Q. Which has the higher job, a member of the International Executive Committee or the Acting Regional Director?

A. Well, the International Executive Board page 1927 } member I suppose would be termed a superior job. I don't know in the Construction Workers just how they term the regional directors. As I told you in the beginning I don't know too much about the administrative affairs of that organization.

Q. I don't reckon you know how David Hunter's salary compares with yours?

A. No, sir; I do not.

Q. You would expect yours to be a little bigger, wouldn't you?

A. I assume that it is but I don't know what any of the boys of District 50 or the Construction Workers receive.

Q. I believe that David Hunter first arrived in Pikeville along in October or November, 1948, didn't he?

A. I don't remember the date.

Q. The latter part?

A. Of the season that he was there. I don't know, but I believe it was in 1948, yes, sir.

Q. How many trips would you estimate that you and he have taken altogether of the kind of these three or four that you and I have been over here?

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A. I would have to think a little.

Q. Do think, won't you?

A. Yes, sir.

I can remember five. There are possibly more. I can remember five, but there are possibly more.

Q. Spread over the period from the time he page 1928 } got there down to the last one I have mentioned here?

A. Until he left the job.

Q. Which was when?

A. I don't remember, but something like 60 days ago, I imagine.

Q. Do you remember why he left?

A. Why he left?

Q. Yes.

A. No, sir; I have no idea why he left.

Q. Did you have an opportunity to tell him goodbye?

A. Yes, sir; I did.

Q. Unless you want me to I won't do it, but the constitution of the United Mine Workers has been introduced here in evidence both by my side and by your side.

A. Yes, sir.

Q. And it refers in there time and again to the one organization. That means United Mine Workers, District 50, and United Construction Workers, doesn't it?

A. I am not a constitutional expert nor authority. It is my understanding—such opinion as I would give you would be strictly an opinion. I am not a constitutional authority whatsoever. But it is my information that every man who is a member of this union or our union, United Mine Workers of

America, from top to bottom, who are members page 1929 } of the United Mine Workers of America, are governed by that constitution.

Q. And are members of the one organization?

A. If they are members of the United Mine Workers of America, yes.

Q. And if they are members of the United Construction Workers they are members of the one organization, aren't they?

A. Then they are affiliated with the United Mine Workers of America.

Q. And they are members of the one organization, aren't they?

A. No, sir; I don't think so. As I tell you, it is purely an

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opinion. I am not a constitutional authority, but I don't think so.

Q. You are not a constitutional authority, but you are a member of the International Executive Board?

A. I am, and I am a member of the United Mine Workers of America.

Q. Then would you say that a member of District 50 is a member of the one organization, to-wit, your union?

A. I don't think so, no, sir.

Q. Has John L. Lewis got a right to can you?

A. Yes, sir; he would have a right to discharge me for cause, subject to the approval of the International Executive Board.

Q. Do you know whether he could can Robert Fohl, his nephew-in-law?

A. Robert Fohl?

Q. Yes, sir.

A. I understand Robert Fohl is a representative of and an employee of District No. 50. I don't know what the constitution provides with respect to District No. 50.

Q. You don't know whether he can can him or not?

A. No, sir; I don't know.

Q. But if he would recommend that he be canned, do you think that would have influence?

A. Why, I suppose it would, yes, sir.

Q. Mr. Raney, did you ever hear of any labor trouble at the Link-Belt Company at Wheelwright, Kentucky?

Mr. Mullen: We object, Your Honor, for the reasons heretofore stated with regard to any outside transactions.

The Court: The same ruling.

Mr. Mullen: Exception, please.

The Witness: Would you define what you mean by trouble, sir?

By Mr. Robertson:

Q. What I meant was, if you will excuse me, the United Construction Workers running people off the job there.

A. I do not know.

page 1931 } Q. Either the Link-Belt Company or the Beckett Construction Company?

A. What did you say that job was?

Q. Either Link-Belt Company or the Beckett Construction Company.

Thomas Estil Rancy.

A. Where was it located?

Q. Wheelwright. Have you ever heard of that?

A. Yes, sir; but I don't know of them having the job at Wheelwright.

Q. How far is Wheelwright from Pikeville?

A. Thirty-five miles.

Q. Did you ever hear of the United Construction Workers running anybody off a job at Wheelwright?

A. No, sir. I don't know why they would be in Wheelwright. Wheelwright is a mine that is strictly producing coal, and Wheelwright is under the jurisdiction of the United Mine Workers of America. I don't think they have any members in Wheelwright.

Q. They ought to keep out of there, oughtn't they?

A. I don't think they have any one there to keep out.

Q. Do you know a man named Conn, C-o-n-n, in Prestonsburg, Kentucky.

A. What is the name?

Q. C-o-n-n.

A. No, sir; I don't.

page 1932 } Q. I have referred to you about that trouble
over there with the Hughes Motor Company and
Rainier's Garage. You said you didn't know anything about
that.

A. I didn't say I didn't know anything about it.

Mr. Mullen: Objection and exception.

The Court: Same ruling.

The Witness: You asked me one question and I answered, but I didn't say anything like that.

By Mr. Robertson:

Q. I will ask you if you didn't go over to Prestonsburg and talk to that man Conn, and you told him that the pickets should be called off until everything was settled and you had the pickets called off from those two places.

A. I absolutely did not.

Mr. Robertson: Will your Honor take a five-minute recess?

The Court: We will recess until 2:15, gentlemen.

(Whereupon, at 12:45 o'clock p. m. the Court recessed until 2:15 o'clock p. m. the same day.)

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AFTERNOON SESSION.

2:15 p. m.

Whereupon,

THOMAS ESTIL RANEY

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

CROSS EXAMINATION (continued)

By Mr. Robertson:

Q. Mr. Raney, I think you testified before lunch that you did not know of any instances in Eastern Kentucky where the United Construction Workers or District 50 or United Mine Workers had run anybody off the job.

A. Yes, sir, and I also said any other labor union.

Q. Let me see if I can refresh your memory at all.

I am referring now to the Answer of District 50, United Mine Workers of America, to Summons of the Plaintiff to Answer Interrogatories, the report made by David Hunter, Acting Director, Region 58, to Mr. A. D. Lewis, Chairman of the Organizing Committee of both District 50 and the United Construction Workers, dated April 7, 1950, for the weeks ending March 25 and April 1, 1950; for Wednesday, March 29, 1950, as follows:—

Mr. Mullen: If Your Honor please, the same objection.

The Court: Same ruling.

Mr. Mullen: And an exception noted.

page 1934 } By Mr. Robertson:

Q. This is Mr. David Hunter reporting to Mr. A. D. Lewis:

“Wednesday, March 29, 1950. Met Mr. D. G. Hughes of the R. H. Hamill Company, Huntington, West Virginia, in Louisa, Kentucky. Their job at Ragland, Kentucky, has been closed down for the past week. Mr. Hughes agreed to our rates and will sign a contract when the job resumes operations in approximately two weeks. This company has been working all A. F. L. labor.”

Thomas Estil Raney.

You don't know anything about that?

A. No, sir, I don't know if there is a place called Bagland, West Virginia, or Ragland, Kentucky. I do not know. I never heard of it.

Q. Now I am referring to a report by David Hunter to Mr. A. D. Lewis, in Mr. Lewis' dual capacity, dated May 22, 1950, weekly report for the week ending May 20, 1950, and I refer to May 16, 1950, where Mr. Hunter reports to Mr. Lewis as follows:—

Mr. Mullen: The same objection.

The Court: The same ruling.

Mr. Mullen: Exception.

By Mr. Robertson:

Q. "In Logan, West Virginia, conferring with Mr. Palmer of the Frederick Engineering Company, Huntington, West Virginia. This company is taking over the contract the Hamill Construction Company had with the Island Creek Coal Company, Ragland, West Virginia. The job was closed March 15, 1950. A satisfactory agreement was reached and new wage rates will be negotiated with the Frederick Engineering Company. This company is under contract with the United Construction Workers and is in Local 778-A."

You don't know anything about that?

A. I never heard of it, no, sir.

Q. I refer now to Exhibit 4.22 with the Answer of District 50, United Mine Workers, Exhibit 4.22 being a report by David Hunter to Mr. A. D. Lewis in Mr. Lewis' dual capacity, dated August 5, 1950, weekly report for week ending July 29, 1950, and under "Organizational," I refer to the Hazard, Kentucky area, as follows:

"Representative Fleming is doing a splendid job of organizing, at present"—

Mr. Mullen: Objection, if Your Honor please.

The Court: The same ruling.

Mr. Mullen: Exception.

By Mr. Robertson:

Q. —"contract with the Livingstone Construction Company at Toner, Kentucky. I have been endeavoring to get this job

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under contract for the past five months, and until Mr. Fleming went in and refused to scare, and even page 1936 } whipped the bully on the job, we had been unable to touch it. The Livingstone Construction job at Jewel Ridge, Kentucky, is closed down. I am confident that if Representative Fleming keeps up his good work, he will make an A-1 representative."

You don't know anything about that?

A. I don't know Representative Fleming.

Q. I say, you don't know anything about that episode?

A. I do not, no, sir. If I knew anything about that, I would know Fleming.

Q. I refer now to Exhibit 4.28 with the Answer of District 50, United Mine Workers of America, to the Summons of the Plaintiff to Answer Interrogatories, Exhibit 4.28 being a report by David Hunter, Acting Director of Region 58, to Mr. A. D. Lewis in Mr. Lewis' dual capacity, the report being dated September 14, 1950, weekly report for the week ending September 9, 1950, and I refer to Thursday, September 7, 1950,—

Mr. Mullen: Objection.

The Court: Same ruling.

Mr. Mullen: Exception.

[7] [] [] []
By Mr. Robertson:

Q. —where Mr. Hunter reported as follows:

"Met with Mr. Page, President of the Associated Construction Company. This company operates from Marion, Virginia, and is erecting a large school building at page 1937 } Jeff, Kentucky. Mr. Page's only objection to signing a contract was the fact that his sub-contractors are all A. F. L., and he felt they may refuse to go along with or sign a contract. I gave Mr. Page a week to think it over, as I intend to close the job at Jeff, Kentucky."

Do you know anything about that episode?

A. Jeff, Kentucky, is 100 miles from Pikeville. I do not know anything about it.

Q. Did you testify before lunch that you didn't know anything about the trouble that the Hughes Motor Company had at Prestonsburg, Kentucky?

A. I believe that my answer to the previous question that you asked, that I asked you to define what you meant by

Thomas Estil Raney.

"trouble," and I know nothing of any trouble that existed in Prestonsburg.

Q. It was trouble about picketing that resulted in an injunction proceeding in the State Court out there. Do you remember that?

A. Yes, sir.

Colonel Harris: May we have our continuing line of objections and exceptions to that?

The Court: You may.

The Witness: Yes, sir, I know about that, but there was no trouble.

page 1938 } By Mr. Robertson: -

Q. You went down there and pulled the pickets off, didn't you?

A. I did not.

Would you like me to tell you why I did go?

Q. Yes, I would be glad if you would.

A. Mr. Hunter came to me—

Q. Mr. who?

A. Mr. Hunter, Dave Hunter, came to me at my office. He told me that he had received a telephone call from some gentleman in Prestonsburg. I don't know who. I don't remember. He then told me, of course, but I don't remember who it was.

He also told me that there was an injunction against them down there on some pickets they had, a restraining order, rather, not an injunction. He asked me if I would go to Prestonsburg with him to introduce him to an attorney, in order to defend them in the injunction suit. I told him that I would, and I did go with him, and I did introduce him to an attorney, Mr. Edward Hill, and Mr. Hill did defend him in the court. I know nothing else whatsoever about the case.

Q. That is all you know about it?

A. That is all I know, and that is all I did.

Q. Just let's be sure that we are talking about the same episode. In this case that we are trying now, on page 1939 } the 21st day of November, 1950, the deposition of Charles Spradlin was taken at Prestonsburg in behalf of the Laburnum Corporation. Do you know Mr. Spradlin?

A. No, sir, I don't.

Q. Do you know Mr. Allen there, the editor of the Floyd County News in Prestonsburg?

Thomas Estil Raney.

A. I have met him, yes, sir, but I can't say that I know the man.

Q. In the course of his deposition, there was introduced a newspaper article in which Mr. Spradlin reported upon a mass meeting there in Prestonsburg.

Mr. Mullen: If Your Honor please, a newspaper article is not evidence of any fact, except in the case of libel suits, where it is a fact. They propose, I suppose, to introduce a newspaper article, which is simply hearsay and not proper evidence. It is not in any way relevant in this case. They cannot examine a witness on a newspaper article which he had nothing to do with, which was written by some third party; and as I say, newspaper articles are not evidence of facts.

Mr. Robertson: If Your Honor please, I think Mr. Mullen was a little premature. All I propose to do here at this time is to refer to the newspaper article and to read the opening paragraph or the headline to the witness, and ask him if that refreshes his memory, and if that is the episode to which he has referred.

page 1940 } Mr. Mullen: That is exactly what I object to, Your Honor, reading any part of a newspaper article, because it is not proper evidence.

The Court: Your objection is sustained.

Mr. Robertson: We withdraw the offer.

Mr. Mullen: The objection was sustained.

Mr. Robertson: I say, I withdraw the offer, too, so we have it both ways.

Mr. Mullen: I just want it straight that you are not making any gracious gifts.

By Mr. Robertson:

Q. Do you know a man named Harold Conn?

A. Yes, sir, I do.

Q. Who is he?

A. He is a mine guard for the Inland Steel Company at the present time, I believe.

Q. So far as you know, is he a man of good reputation for truth and veracity?

A. I know nothing to the contrary, no, sir.

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Thomas Estil Raney.

page 1945 }

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We have no other questions of this witness.

RE-DIRECT EXAMINATION.

By Mr. Mullen:

Q. Mr. Raney, do you get copies of the reports made by Mr. Hunter for District 50 and the United Construction Workers, made by him to the headquarters in Washington?

A. No, sir, I do not.

Q. Do you have a chance to read them?

A. No, sir, I have no chance whatsoever to read them.

Q. Mr. Raney, in labor matter parlance, in connection with negotiating contracts, what is the meaning of the term, "closed down"?

A. The meaning of the term is when you have a strike, that mine is temporarily down, it is temporarily closed down until such time as the strike is settled or until a contract has been finally consummated.

Q. Does the word "shutdown" have the same meaning?

A. The same meaning, yes, sir. They are commonly referred to as such.

Mr. Mullen: You may step down.

Mr. Robertson: Wait a minute.

page 1946 }

RE-CROSS EXAMINATION.

By Mr. Robertson:

Q. As a member of the International Executive Committee, do you know how long A. D. Lewis is required to keep his official reports that are submitted to him by David Hunter?

A. No, sir, I do not, except that I heard it testified to here. That is all I know.

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Mr. Mullen: If Your Honor please, with the exception of the reservation that we reached in your office this morning as to certain items we might put in later, the Defendants rest.

Defendants rest.

page 1947 } Mr. Robertson. The first thing we have, Your Honor, is the deposition of a man named Baldridge.

Mr. Fred G. Pollard: Whose deposition did you say?

Mr. Allen: Nelson Baldridge.

Mr. Robertson: Taken at Prestonsburg on November 21, 1950.

Mr. Allen: Page 49, I believe it is, Mr. Mullen.

Mr. Robertson: There is a piece of a newspaper thing there that I of course will leave out in deference to the ruling of the Court.

Mr. Fred G. Pollard: Your Honor, I understand that the Plaintiff is now putting in evidence in rebuttal.

Mr. Robertson: That is right.

Mr. Fred G. Pollard: This seems to be a part of your main case.

Mr. Robertson: No, this is in rebuttal.

Mr. Fred G. Pollard: We object to it on the ground that it is not in rebuttal.

The Court: I haven't read it.

Mr. Robertson: It is in rebuttal of Tom Raney, it is in rebuttal—I haven't the list of their witnesses. It is in rebuttal of everybody who said they didn't know anything about these occurrences. We are going to show right now something about one of them that they are bound to know about, we think.

page 1948 } The Court: You may read it and the Court will see what is in it.

Mr. Allen: Do you want me to go ahead, sir?

Colonel Harris: You are reserving the ruling until later?

The Court: The Court may strike the evidence later. We will see what the evidence discloses.

Colonel Harris: I just wondered if we should take an exception.

The Court: I think so.

Colonel Harris: We note an exception.

(At this point parts of the deposition of Nelson Baldridge was read to the jury, in rebuttal, Mr. Allen reading the questions and Mr. Robertson reading the answers, as follows:)

“NELSON BALDRIDGE.

“Thereupon, the witness, Nelson Baldrige, after being first duly sworn, deposed as follows:

“DIRECT EXAMINATION.

“By Mr. Robertson:

“Question: Mr. Baldrige, your name is Nelson Baldrige?

“Answer: Yes, sir.

“Question: Where do you live?

“Answer: Four miles west of town.

“Question: That is four miles west of Prestonsburg, Kentucky?

page 1949 } “Answer: Yes, sir.

“Question: How long have you lived at your present home?

“Answer: Forty-one years.

“Question: Mr. Baldrige, in May, 1949, and immediately before that, what was your business?

“Answer: I have been in the painting business for several years.

“Question: Is Wheelwright in the State of Kentucky?

“Answer: Yes, sir.

“Question: And in what country?

“Answer: Floyd.

“Question: And at what town or place?

“Answer: Wheelwright.

“Question: Is that near Price?

“Answer: It must be five or six miles.

“Question: Now, at that time were you a member of any labor organization?

“Answer: I wasn't myself.

“Question: The article states you were employing 14 men at that time. Do you know, whether or not, they were affiliated with any labor organization?

“Answer: Yes, sir.”

Mr. Mullen: Where are you?

The Court: The top of page 51 now, Mr. Mullen.

Colonel Harris: If the Court pleases, we want our continuing line of objections to the questions that he is coming to, irrespective of the major objection that it is not in rebuttal.

The Court: That will be understood.

Nelson Baldrige.

Colonel Harris: And an exception noted.

Mr. Allen: Continuing the deposition:

(Reading of the deposition continued as follows:)

“Question: What organization was that?

“Answer: A. F. of L.

Mr. Robertson: Now you skip the newspaper.

Mr. Allen: And go down to Question 15.

(Reading of the deposition continued as follows:)

“Question: The Rust Engineering Company, do you know what labor it was employing, whether its employees belong to the A. F. of L. or some other labor organization?

“Answer: I wouldn't say.

“Question: Do you know what labor the Link Belt Company was employing, whether it was A. F. of L. labor or other organized labor?

“Answer: I do not.

“Question: The Beckett Construction Company, do you know what labor it was employing?

“Answer: No, sir.

“Question: How big was this painting job that you had there?

page 1951 } “Answer: It was the entire camp, around 450 or 460 houses.

“Question: How long did you expect to work on that job if it had gone to completion without interruption?

“Answer: Well, I had until October 15th.

“Question: And you had started when?

“Answer: I begun work in April, making preparations. We had a set time to begin painting, and we started on that time.

“Question: Will you state the circumstances under which you stopped working on that job?

“Answer: Yes, sir. After we had started we had probably 25 or 30 houses painted, a fellow, Mr. Hart, and the President of the local at Wheelwright—right now I can't call his name—and another fellow or two, I didn't know them. I think they were a committee, came down there one evening. We were closing up, putting our stuff in the shop, and they said: ‘You fellows are going to have to join the United Construction Workers.’ That was the first I heard of it, and I told Mr.

Nelson Baldridge.

Hart and this fellow with him that these fellows were A. F. of L. workers and—”

Mr. Mullen: If Your Honor please, we object to going into other transactions that are foreign to this case. We are not trying what happened in other instances. We are trying this case here. They are between third parties, and page 1952 } it is not proper evidence in this case.

Mr. Robertson: It is the same ruling the Court has made time and again, Your Honor, of course. It is the same thing they have done when they have tried to show and did show what happened over at Hopewell. It is to show the pattern throughout this territory.

Mr. Mullen: Your own man brought in what happened at Hopewell, and simply after he brought it in we questioned him on it.

Mr. Robertson: It is the same thing the Court has ruled on time and again.

The Court: The objection is overruled.

Mr. Fred G. Pollard: An exception is noted.

Mr. Robertson: (Reading of the deposition was continued as follows:)

“—and I didn’t understand why they would have to belong to the United Construction Workers, and he said they had to if they worked in or around the mines, and I told him, I said: ‘Give us a few days to think on this, kindly let us check into this. We want to know if they have that to do.’ I said, ‘It is immaterial with me. The only thing about it is I am working organized labor, I recognize the union.’ So, he said they would have to belong to that union if they done any work in or around the mines. They came back a few days later. We had several more houses painted, and they asked the page 1954 } boys what they were going to do on this particular evening. They didn’t say anything to me, but I had told them I had organized labor. What, I mean by that, union men. So, Hart said: ‘There will be no work here tomorrow, boys.’ We started back to work the next morning following the evening he made this statement, and when we went up by Price we ran into that big crew of men.

“Question: How many men would you say you ran into there at Price?

“Answer: It was a pretty good bunch of men. I under-

Nelson Baldridge.

stood they had stopped some other cars or trucks. There was a great big bunch of men there, looked like 200 or 300 men to me. I don't know whether they were all United Mine Workers, or what they was. I knew part of them, some of them were from the camp up there where I was working. Whenever they stopped the truck—I was driving a truck—they were in the road and I heard some fellow say: 'Pull them out,' and Mr. Hart and some other fellow, I don't know who it was, came up to the back end of the truck and said: 'You boys can join the United Construction Workers this morning,' and some of my men said: 'We belong to the A. F. of L.,' and they said: 'All right, unload,' and the boys hit the ground, and I made mention to Hart or some of them that I was going on and some fellow said: 'You are not going on,' and Hart said: 'Baldridge has been nice, he hasn't been dirty as some of them, let him put his tools up,' and I took my
page 1954 { brushes and tools and put them in a small shop and locked them up because I had several hundred dollars worth of brushes and tools.

"Question: What did the men do when they got out of your truck?

"Answer: I left them there, all of them.

"Question: How long was it before you went back to any of that painting work, if you ever went back to it?

"Answer: It was a month before I went back to work.

"Question: What were the circumstances under which you went back to work?

"Answer: I went to Pikeville, up to Mr. Hunter's office and signed a contract.

"Question: Obligating you to do what?

"Answer: Well, I had to work under that contract.

"Question: Did you thereby recognize the United Construction Workers?

"Answer: I did when I signed that contract.

"Why did you sign that contract?

"Answer: To finish that job which I was bound by contract with the company to finish.

"Question: What company was your contract with?

"Answer: Inland Steel Company.

"Question: Had they said anything to you about going ahead with the job?

page 1955 { "Answer: No. They didn't tell me to go ahead. I went to Mr. Price and I said: 'Mr. Price, it looks like I am between a rock and a hard place,' and

Nelson Baldrige.

he said: "There is nothing I can do about it. I am looking to you to have this job done by October 14th."

"Question: Who is Mr. Price?"

"Answer: He is General Manager of Inland Steel Company."

"Question: Do you know a man by the name of Carson Hibbits?"

"Answer: Yes, sir."

"Question: On this morning when they ordered your men out of the truck, did you see Carson Hibbits?"

"Answer: Yes, sir. He was there at Price."

"Question: Was that before or after your men were ordered out of the truck?"

"Answer: Well, that was at the time."

"Question: How far away was he from the place where they were ordered out of the truck?"

"Answer: He was right there, right at the truck."

"Question: How close to it, would you say?"

"Answer: He was right against the back end of it when I got out of the truck."

"Question: Was he on the ground or in an automobile?"

"Answer: He was on the ground."

"Question: Could you see who he was with, if anybody?"

"Answer: I saw Mr. Hart there."

page 1956 } "Question: Did you see David Hunter there?"

"Answer: I didn't see David Hunter there, as I remember."

"Question: As a result of that trouble up there did you quit the painting job?"

"Answer: Well, I haven't been in it since I finished that job. Just a minute, let me make some corrections there. I finished that contract and finished up some touch-up work at Price after my contract was completed. What I mean, I did not quit working until this touch-up work was finished at Price."

"Question: Did you have any difficulty in completing your touch-up work?"

"Answer: No, sir."

"Question: When you were driving that truck up there with the men in it that morning did you know, whether or not, at that time they were members of the A. F. of L.?"

"Answer: Yes, sir, everyone of them."

"Question: Why didn't you and your men go on to work that morning instead of getting out of the truck?"

Nelson Baldrige.

"Answer: Well, they told us not to.

"Question: Why didn't you go on, anyway?

"Answer: If somebody would tell you not to do something, what would you do?

"Question: Were you and your men outnumbered?

"Answer: Well, I just had about 14 or 15
page 1957 } men.

"Question: How many would you estimate they had you outnumbered?

"Answer: There must have been 10 or 15 to one. There was a great big bunch of them.

"Question: Was that why you quit?

"Answer: You see, they had told us on the evening before not to report to work, that there would not be any work there the next day. Mr. Hart said, 'We are going to wrap a picket line around this Price work.'

"Question: In your discussions with Hart, about which you have spoken, did he make any statement about any work in Breathitt County?

"Answer: You mean at this particular time?

"Question: At any of these times you have talked about, or at any time.

"Answer: Not at this particular time but I saw Mr. Hart on the street here and I asked him what he was doing, and he said he was trying to, or was going to organize that work in Breathitt County.

"Question: Do you know about when it was that he made that statement to you?

"Answer: It was after I got finished up there at Inland Steel, along about that fall; along about November or December. I know it was cold weather."

page 1958 } Mr. Allen: That is all of that deposition.

Colonel Harris: We make a motion to exclude on all the grounds assigned and all the different objections.

The Court: The motion is overruled.

Colonel Harris: We reserve an exception.

Mr. Robertson: If Your Honor please, we have some matters to take up with the Court in Chambers.

The Court: All right, the Court will recess, gentlemen, to see counsel in Chambers.

(Brief recess.)

page 1959 } (The following proceedings were had in Chambers:)

Colonel Harris: Judge, I have one matter before they take up something.

We would like to add an objection which I hesitated to make in there in front of the jury where they could hear it, to these depositions of other transactions and on other occasions. We would like to add to each of those objections that it is highly prejudicial and inflammatory and is offered for that purpose.

The Court: All right. Is there any objection to that gentlemen? Let the record show accordingly.

Mr. Robertson: If Your Honor please, I want to tell the Court about what our setup is here on rebuttal and suggest a course of procedure that I do not believe will lose any time.

I think we are going to have to put Mr. Delinger back on briefly, but I have to check my memory on that phase of it. We are certainly going to have to put Mr. Bryan back about Arnett's statement, and then of course on this accounting matter that came in here this morning we are going to have to put our accountants on to give our version of that matter. Then we may or may not have to put two Laburnum employees on, which I can check up on very briefly. Of course all of those are very brief matters.

Here is what presents difficulty, and all of us—
page 1960 } Mr. Allen, Mr. Lowden, Mr. Moore, and I—have given it the best thought we are capable of, regarding this mass of photostats that were put in here Tuesday. We feel compelled to offer them. I regret it just as much as anyone else. All of us have tried to figure how we could get around the drudgery of handling them. The only way I know how to do it is to go through them one by one with the Court. If those on our side go through them by ourselves, we are not going to get anywhere. If the Defendants' counsel go through them by themselves, they are not going to get anywhere. If we go through them together, we are never going to reach any agreement. I think it would be a duplication of effort. I think just to go through it in the way I suggested as quickly as we can and with as little lost motion as we can is the only way I know how to handle it. It certainly will take two days to do it, and maybe three.

My thought is, suppose you adjourn the jury until either Tuesday or Wednesday and let us do it, and by the time we have finished that, I think we would be ready on these witnesses. I told Mr. Mullen that if I were the lawyers on the other side, I wouldn't agree to anything except what suited

my own convenience on that, but my work is just getting in a terrible fix and I will be glad to work Saturday, Sunday, nights, any other time that the Court or anybody else is willing to do it.

page 1961 } Mr. Mullen: As I understand, you yourself don't know what any of these are.

Mr. Robertson: Mr. Bryan knows what is in them. Mr. Bryan is a licensed lawyer. I know what is in some of them.

Mr. Bryan: I think I could expedite the matter a great deal if I would be allowed to take part in that portion of it and explain why I think certain things are relevant.

Mr. Mullen: If Your Honor please—

The Court: You interposed an objection to their introduction.

Mr. Mullen: I will interpose some more. We opposed it.

Mr. Allen: Opposed what?

The Court: The introduction of these exhibits.

Mr. Mullen: Yes, we opposed the introduction of them at the time for reasons then stated, because they were offered *en masse*; we were asked to pass on something that we hadn't read and the Court hadn't read, and it might lead into error unconsciously. We further object to them by reason of the time they were offered. The Plaintiff had rested its case, and then offered after that this great mass of documents, which we understand are nothing more than cumulative.

Mr. Robertson: Of course, you are in the same fix you said I was in. You don't know what they are.
page 1962 } You are guessing.

Mr. Mullen: From what you said before and from what we discussed about them, I know the point you introduced them on. It is cumulative. It unreasonably encumbers the record, and it comes at a time when it is too late for them to introduce them.

The Court: Gentlemen, I have given consideration to this matter since Mr. Allen offered the same in evidence. At that time they were objected to by counsel for the Defendants, and the Court has concluded to sustain the objection.

Mr. Allen: Then, Your Honor, we mark them excluded and take our exception.

The Court: That is right.

(Plaintiff's Exhibit 93, previously marked for identification, was EXCLUDED.)

Mr. Robertson: That ends it as far as I am concerned, unless you want to add something.

Mr. Allen: I was just stating our exception.

Mr. Robertson: I was passing on to something else.

Mr. Allen: We want the record to show that we except.

The Court: Yes.

Mr. Allen: And we ought to state the grounds. That is what I was doing, stating the grounds.

page 1963 } The Court: All right.

Mr. Allen: That we think they were offered in due time, that is, before we had fully rested our case, and we think they contain material evidence on the question of agency, as we have indicated before, and are proper to be considered as a part of the evidence in the case.

Mr. Robertson: Judge, I don't want to argue against the ruling of the Court. What I was going to say when Your Honor beat me to the draw (I think we are getting into very blood-thirsty terms here in this case) was that, having spent so much time and effort in the trial of this case, now that we have gotten where everybody is tired and anxious to finish, it is a pity to cut off any part of it that might constitute error. You know, if you do consider them and rule on them, that is one possible ground of error that cannot arise.

The Court: Well, that is the ruling of the Court.

Mr. Robertson: All right.

Mr. Bryan: Will you mark each one, Your Honor?

The Court: I understood the other day they were marked one exhibit.

Mr. Bryan: They were all wrapped up in a big brown paper, but there are three hundred and some items there. I think they are not identified in some way—

page 1964 } Mr. Robertson: I think it is up to us to identify them and let the Court put his initials on them. I think Mr. Bryan might identify them and the Court add his initials serially.

Mr. Allen: How shall we identify them, put one exhibit number on the whole batch and let the others be sub-numbers?

Mr. Robertson: What difference does it make? Let it go from one to a million. That will identify them all right. Suppose it is Exhibit 115, sub-1 to a million.

Mr. Allen: Has the Judge got to sign his name on each one or on the whole package? That is what I am talking about.

Mr. Robertson: I think he ought to sign his name on every single one of them. (Laughter.)

Mr. Mullen: I think Mr. Allen's idea was to give them a number, and each of them a sub-number that would identify and keep them from getting mixed up.

The Court: The whole batch was given a number when they

were offered. It strikes me that you could give sub-numbers to them.

Mr. Robertson: Not sub-letters, but sub-numbers.

Mr. Bryan: All of them are set out in a schedule submitted at the same time, but it seems to me that some number should be given to each one of those so they can be referred to intelligently later.

page 1965 } The Court: The Court will be happy to have any suggestion that you gentlemen may have to offer in that regard.

Colonel Harris: I think it is an undue burden on Your Honor to ask Your Honor to sit and sign your name 321 or 315 times. It seems to me that it is unduly prolonging and delaying the case, and you have a special jury of business men whose time is valuable. It just makes me feel that we are engaged in a futile pursuit to spend two or three days either in Court or waiting while that takes place.

Mr. Mullen: I don't understand that that is what it is intended to do at all.

Mr. Allen: I don't think anybody understood the suggestion I made, but His Honor did.

Mr. Mullen: So far, I don't know. I am perfectly willing to let you gentlemen identify them and waive His Honor having to do it.

Mr. Robertson: I would rather for you to do that, Mr. Mullen, in the presence of Mr. Bryan.

Mr. Mullen: Oh, no.

Mr. Allen: I submit, Your Honor, it can be done in a manner that will satisfy our rules, making it a part of the record and requiring Your Honor to sign your name only once. Take the whole batch and let somebody number them, giving them sub-numbers, and then let the certificate show that this is exhibit so-and-so, which includes sub-numbers page 1966 } from one to whatever it is, and sign your name once.

The Court: I think that would be satisfactory.

Mr. Robertson: That is all right with me.

Passing to the next thing, Your Honor, we have got to assemble some accounting data to rebut the accounting data that they put in this morning. It will take more than overnight to do it. It is perfectly obvious that the case is going to run into next week, anyway, and I am going to ask the Court to adjourn over until Monday morning so that we can have the opportunity to get that accounting data and all our rebuttal in shape, and we will be prepared to close our case Monday.

The Court: You don't think you could have that by to-

morrow afternoon, Mr. Robertson? I had hoped that we would get all the evidence in this week.

Mr. Robertson: We can try. I don't know whether we can or not. I can get this part in by tomorrow afternoon.

The Court: How about Mr. Bryan's testimony? Could we get his rebuttal in this afternoon? You said you wanted to put him on.

Mr. Robertson: No, sir, I can't. I have to go through the transcript. On this accounting proposition our accountants are going to be Leach, Calkins & Scott, and T. Coleman Andrews, and I want Mr. Bryan, before he undertakes to testify regarding accounting matters, to have been in
page 1967 } contact with the accountants and not with me.

(Discussion off the record and brief recess.)

The Court: Gentlemen, we will adjourn, then, until ten o'clock Monday morning.

page 1968 } (The following proceedings were had in open court:)

The Court: Gentlemen of the Jury, at this point in the trial it becomes necessary to adjourn Court until Monday morning at ten o'clock. Monday was to have been a holiday for some of you, and I am sorry we couldn't work it out.

(Whereupon, at 3:30 o'clock p. m., the Court was adjourned until 10:00 o'clock a. m., Monday, February 12, 1951.)

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* * * * *

Hearing in the above-entitled matter was resumed, pursuant to recess, at 10:00 o'clock a. m., before the Honorable Harold F. Snead, Judge of the Circuit Court of the City of Richmond, and a Special Jury, on February 12, 1951.

Appearances: Archibald G. Robertson, George E. Allen, T. Justin Moore, Jr., Francis V. Lowden, Jr., Counsel for the Plaintiff.

A. Hamilton Bryan, President, Laburnum Construction Corporation.

James Mullen, Fred G. Pollard, Colonel Crampton Harris, Counsel for the Defendants.

Also Present: Robert N. Pollard, Jr.

page 1970 }

PROCEEDINGS.

(Roll call of the jury.)

The Court: Mr. Robertson?

Mr. Robertson: If Your Honor please, we wish to read from Interrogatories (4), question 38, and the answer to it.

Mr. Fred G. Pollard: To whom are they addressed?

Mr. Robertson: United Mine Workers.

Mr. Mullen: If Your Honor please, we make the same objections heretofore made to reading without reading the entire interrogatory.

The Court: The same ruling.

Mr. Mullen: Exception.

Mr. Allen: Question 38, on page 20: "With respect to the privileges, powers and duties of the President of the United Mine Workers of America, did the constitution of the United Mine Workers of America at any time between the dates October 28, 1948, and August 4, 1949, and also after August 4, 1949, provide among other things as follows: 'Between sessions of the International Executive Board he shall have full power to direct the workings of the organization and shall report his acts to the International Executive Board for its approval'—"

The Court: One minute, gentlemen.

Colonel Harris: I want to add the additional objection that they introduced all the interrogatories in page 1971 } evidence on their direct case, and therefore it is not in rebuttal to read them at this time.

Mr. Robertson: It is in rebuttal to the testimony of Thomas Raney as to what the one organization meant. I think nothing could be clearer rebuttal, Your Honor. The jury is entitled to know that he is contradicted by the answer of the United Mine Workers of America, he being a member of their Board of Directors.

The Court: I will allow the question.

Colonel Harris: We reserve an exception.

Mr. Allen: "—and if so, state the following: (a) During what period or periods did said constitution so provide—"

Mr. Robertson: "Yes, at all times inquired about."

Mr. Allen: "(b) As used in the language quoted above do the words 'International Executive Board' mean the International Executive Board of the United Mine Workers of America? If not, what do those words mean—"

Mr. Robertson: "Yes."

Mr. Allen: "(c) As used in the language quoted above does

the word 'organization' mean United Mine Workers of America and its districts, subdistricts, branches and subordinate branches including District 50 and United Construction Workers? If not, what does that word mean?

Mr. Robertson: "Yes, but primary power to direct the United Construction Workers and District 50 page 1972 $\frac{1}{2}$ is in the Chairman of the United Construction Workers and Chairman of the Organizing Committee of District 50 respectively."

Mr. Fred G. Pollard: Would you read me the last answer back, please?

(The answer requested was read by the reporter.)

Mr. Fred G. Pollard: Your Honor, I would like to point out to the Court that the answer was not read as written in the answer.

Mr. Robertson: Will you read it, please?

The Court: What is the difference?

Mr. Fred G. Pollard: Mr. Robertson answered "Chairman of the United Construction Workers" and the answer reads "Director of United Construction Workers."

The Court: Let the record show accordingly.

Mr. Robertson: If Your Honor please, the Defendants introduced in evidence as their Exhibit 68 six sheets of tabulated figures entitled "Analysis of Gross Profit for the Year Ended December 31, 1949," and the Defendants introduced as Defendants' Exhibit 69 six sheets of tabulated figures entitled "Analysis of Gross Receipts for the Year Ended December 31, 1948." Those figures were furnished to the Defendant by the Plaintiff upon request under ruling of the Court. At the same time the Defendants requested and were furnished similar figures for the year 1941, '42, '43, '44, '45, '46, '47, and figures entitled "Laburnum-Pettijohn" for '44 page 1973 $\frac{1}{2}$ and '45 and figures for Virginia Mechanical Corporation for the year '47, and Virginia Mechanical Corporation for the year '48, and Virginia Mechanical Corporation for the year '49.

As I have stated they saw fit to introduce no part of that but the two sheets which gives a distorted picture and we ask to put in all the information that they requested. I will read the exhibits accordingly.

Two sheets attached together entitled "Laburnum Construction Corporation, analysis of, for the year ending December 31, 1940. I ask that that be marked Plaintiff's Exhibit No. 95.

Mr. Fred G. Pollard: Will you let us look at that?

Mr. Robertson: You already have copies of them.

The Court: You may show it to Mr. Pollard.

(Mr. Pollard examining exhibit.)

Mr. Fred G. Pollard: Your Honor, Defendants had previously put in evidence this Exhibit No. 34 which shows the gross profit or gross loss on the work which it did in the State of West Virginia and the state of Kentucky, and that does not go back past 1947. For that reason we submit that any figures before 1947 are immaterial. We further suggest that any figures relating to Virginia Mechanical Corporation are immaterial because it is not a party to this suit, and therefore we object to the introduction of any figure prior page 1974 } to 1947 and any figures that do not relate solely to Laburnum Corporation.

Mr. Robertson: If Your Honor please, Virginia Mechanical Corporation is a wholly owned subsidiary of Laburnum Construction Corporation, organized as a matter of convenience as an agency through which Laburnum conducts its plumbing and electrical work, and it is necessary for the overall picture of Laburnum.

These gentlemen under order of this Court required us to get every sheet of this data that I have mentioned, every single sheet of it in addition to that other exhibit which he has talked about, their whole theory being that either our figures are distorted or fallacious or unsound or dishonest. Under Court order they required us to get all this data. Now in order to show a distorted picture they put in two years only. I say that the fair and the correct thing to do is to put them all in so that you get the true picture for the period about which they have asked the information, and not a distorted picture of it.

The Court: The objection is overruled, Mr. Pollard.

Mr. Fred G. Pollard: Note an exception.

(Plaintiff's Exhibit No. 95-1 marked and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence two sheets attached together, tabulated figures entitled "Laburnum Construction Corporation, analysis of, for the year ended December 31, 19..." I will have to do this in detail, Your Honor, to make apparent in the record what it is. Headed across the top "Total Contract

Work completed at December 31, 1942, amount, percentage; at December 31, 1941, amount, percentage; during 1942, amount, percentage," and ask that those two sheets collectively be marked Plaintiff's Exhibit No. 95-2.

(The document referred to was marked Plaintiff's Exhibit 95-2 and received in evidence.)

Mr. Robertson: A single sheet of tabulated figures entitled "Laburnum Construction Corporation Analysis of Gross Profit for the Year Ended December 31, 1943," and ask that that be marked Plaintiff's Exhibit 95-3.

(The document referred to was marked Plaintiff's Exhibit 95-3 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence two sheets of tabulated figures attached together entitled "Laburnum Construction Corporation Analysis of Gross Profit for the Year ended December 31, 1944," and ask that that be marked Plaintiff's Exhibit No. 95-4.

(The document referred to was marked Plaintiff's Exhibit 95-4 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence two sheets of tabulated figures attached together entitled "Laburnum Construction Corporation, Analysis of Gross Profit page 1976 } for the year ended December 31, 1945," and ask that those sheets collectively be marked Plaintiff's Exhibit 95-5.

(The documents referred to were marked Plaintiff's Exhibit 95-5 and received in evidence.)

Mr. Robertson: The Plaintiff offers in evidence three sheets of tabulated figures attached together entitled "Laburnum Construction Corporation Analysis of Gross Profit for the year ended December 31, 1946," and ask that those sheets collectively be marked Plaintiff's Exhibit No. 95-6.

(The documents referred to were marked Plaintiff's Exhibit 95-6 and received in evidence.)

page 1977 } Mr. Robertson: Plaintiff offers in evidence twelve sheets of tabulated figures attached to-

gether, entitled "Laburnum Construction Corporation—Analysis of Gross Profit for the Year Ended December 31, 1947," and asks that they collectively be marked Plaintiff's Exhibit No. 95-7.

(The document referred to was marked Plaintiff's Exhibit 95-7 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence a single sheet of tabulated figures, entitled "Laburnum-Pettijohn—Analysis of Gross Profit for the year ended December 31, 1944," and asks that that sheet be marked Plaintiff's Exhibit No. 95-8.

(The document referred to was marked Plaintiff's Exhibit 95-8 and received in evidence.)

Mr. Robertson: Plaintiff offers in evidence a single sheet of tabulated figures entitled, "Laburnum-Pettijohn—Analysis of Gross Profit for the Year Ended December 31, 1945," and asks that that exhibit be marked Plaintiff's Exhibit No. 95-9.

(The document referred to was marked Plaintiff's Exhibit 95-9 and received in evidence.)

Mr. Robertson: If Your Honor please, I notice that an accountant who is going to testify for the Plaintiff is in the room. I reckon he had better go out.

The Court: He had better leave the room.
page 1978 } All witnesses who are going to testify should
leave the room.

Mr. Robertson: The Plaintiff offers in evidence two sheets of tabulated figures attached together, entitled "Virginia Mechanical Corporation—Analysis of Gross Profit for the Year Ended December 31, 1947," and asks that they collectively be marked Plaintiff's Exhibit No. 95-10.

(The document referred to was marked Plaintiff's Exhibit 95-10 and received in evidence.)

Mr. Robertson: The Plaintiff offers in evidence three sheets of tabulated figures attached together, entitled "Virginia Mechanical Corporation—Analysis of Gross Profit for the Year Ended December 31, 1948," and asks that they collectively be marked Plaintiff's Exhibit No. 95-11.

Monroe Sublett.

(The document referred to was marked Plaintiff's Exhibit 95-11 and received in evidence.)

Mr. Robertson: The Plaintiff offers in evidence two sheets of tabulated figures attached together, entitled "Virginia Mechanical Corporation—Analysis of Gross Profit for the Year Ended December 31, 1949," and asks that they collectively be marked Plaintiff's Exhibit No. 95-12.

(The document referred to was marked Plaintiff's Exhibit 95-12 and received in evidence.)

Mr. Robertson: Mr. Monroe Sublett.

page 1979 } Whereupon,

MONROE SUBLETT,

called as a witness in rebuttal on behalf of Plaintiff, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

Mr. Robertson: Mr. Sublett was sworn when he testified before, Your Honor.

The Court: Very well.

By Mr. Robertson:

Q. Mr. Sublett, I will remind you that you are still under the oath that you took when you testified in this case before.

A. Yes, sir.

Q. Do you know Henry Starr, who lived in Paintsville?

A. Yes, sir.

Q. How long have you known him?

A. Ten years.

Q. Do you know what his reputation is for truth and veracity in the community in which he lives?

A. Yes, sir.

Q. What is it?

A. Good.

Monroe Sublett.

Q. Have you ever heard anything against him?

A. No, sir.

page 1980 } Q. Are you familiar with the circumstances under which he ended his service as an officer of the Paintsville Local 646 in which he handled the funds of that Local Union?

A. According to the auditing committee and bank receipts, it was good.

Q. When they balanced his books, did he owe the Union money or did the Union owe him money?

A. We owed him some money.

Q. How much?

A. \$113.54.

Q. Did you pay it to him?

A. Yes, sir.

Mr. Robertson: No other questions.

CROSS EXAMINATION.

By Colonel Harris:

Q. Is Mr. Starr a personal friend of yours?

A. He was a member of Local 646.

Q. And that is the union that you were President of?

A. Yes, sir.

Q. Is he a personal friend of yours?

A. Nothing more than just brothers in the Local, is all.

Q. How long were you and he brothers in the Local?

A. From April—(Witness referring to small book.) —11th day of April in 1941.

page 1981 } Q. Until when?

A. Until the 15th day of—let me see. (Referring to paper.) The 15th day of November.

Q. 1950?

A. That is right.

Q. When you address Henry Starr, do you call him "Brother Henry" or just "Henry"?

A. Part of the time you call him "Brother," and part of the time you call them by their first name.

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MAYNARD C. RAGAN,

called as a witness in rebuttal on behalf of Plaintiff, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Ragan, I remind you that you are still subject to the oath you took when you testified previously in this case.

A. Yes, sir.

Q. When you were on the stand before, you page 1982 { testified about what happened at the job site before July 26, 1949, and after that, so far as you know?

A. Yes, sir, I did.

Q. At any time during the period which has been discussed here in your testimony, did you discharge any common laborer?

A. No, sir, we did not; I did not.

Mr. Robertson: No further questions.

CROSS EXAMINATION.

By Mr. Mullen:

Q. You personally didn't discharge them, you say?

A. Mr. Delinger didn't, either, and I didn't, during that time.

Q. Did you pay them off and tell them that was the end, or to go?

A. No, sir. On July 27, which was a normal payday, five laborers came to me and said that they were afraid to go back to work, and requested that we pay them in full. Those men were Lee Bach, Matt Miller, Ernest Howard, Ossie Lovely, and John Jordan. That has been the common practice with us all along, when a man is in bad circumstances, to give him his pay in full; and on this particular day, those five men came and said that they were afraid to work, that they lived some 26 or 30 miles from the job site, and that they didn't want to have to come back for their pay.

page 1983 {

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ALEXANDER HAMILTON BRYAN,
called as a witness in rebuttal on behalf of Plaintiff, having
been previously duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Bryan, I remind you that you are still subject to
the oath which you took when you testified perviously in this
case.

Did you hear the testimony of John T. Arnett regarding
the signed statement you took from him?

A. Yes, sir.

Q. Do you recall the circumstances under which you took
that statement from him?

A. May I see the statement?

Q. Answer my question first.

A. Yes.

Q. I hand you the signed statement which has been intro-
duced in evidence as Arnett Exhibit No. 1, and ask you to look
at it and see if that is the signed statement you
page 1984 } took from him?

A. (Examining statement.) That is the signed
statement, all right.

Q. State the circumstances under which you took that
particular statement.

A. After our contracts were terminated by Pond Creek
Pocahontas Company and Spring Fork Development Com-
pany, and I was still in Huntington, I decided to go back down
to Paintsville and try to get some statements from various
people who worked for us.

Q. Were you doing that under advice of counsel?

A. Before doing that, I had telephoned Norman Flippen,
and found that he was in Vermont. I talked to your partner,
Mr. T. Justin Moore.

Q. All right, go ahead.

A. And he suggested that I do it.

I drafted a prepared statement which I believed would fit
the circumstances for almost everybody, as I understood them,
and left space for anything extra. That was run off on a
duplicating machine in Huntington, and I then went down to
Paintsville. I was in Paintsville on August 6 and on August
7. As a matter of fact, I spent the night in Paintsville on the
night of Friday, August 5.

Beginning early in the morning on August 6, I started see-

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ing people, first in my hotel room. That didn't
page 1985 } work out so well. I asked Henry Starr if he
knew where I could get the services of a typist,
and he took me to the law offices of Meade and Johnson. Mr.
Billy Johnson was there, and he said that his secretary, Mrs.
Jewell Young, could help me all day.

We fixed several statements there, which were notarized by
Mrs. Young, who is a Notary Public. While there, I had a
portion of this statement fixed out for Mr. Arnett. I thought
that that would fit what he would say, based on what the others
had told me.

There was to be a meeting of the Paintsville Carpenters'
Local that night, and Mr. Bert Preston said that after the
meeting he would have the men come to my hotel room—

Mr. Mullen: Your Honor, I object to that. This is after the
happening, and what Bert Preston said to him about holding
a meeting is immaterial.

Mr. Robertson: Leave out what Mr. Preston said, and tell
the circumstances.

The Witness: After the Carpenters' meeting was over,
various men came to my hotel room, and there we went over
the statement, line by line. I explained to them—

By Mr. Robertson:

Q. I want you to confine yourself to the Arnett statement.
That is the only one we are now talking about.

A. All right.

John Arnett came in. I went over the thing
page 1986 } with him, line by line. We read it together. I
told him that if there was anything down there
that wasn't right, I wanted it changed.

Everything was O. K. until we got down to the part where
it stated that, "Many of the group headed by William O. Hart
appeared to be intoxicated or semi-intoxicated." Johnny
said he didn't think that was right. I said, "Did some of
them appear that way?" And he said, "Yes." So I took a
pen and scratched out the word "Many" and inserted the
word "Some."

Then we got down a little bit further, where part of the
statement says that, "Affiant and many of the employees of
Laburnum and Virginia Mechanical Corporation believe that
some of the group headed by William O. Hart were armed
with concealed weapons." Johnny took question at that, and

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I asked him, "Well, suppose they were armed, do you think they might be armed?" He said yes, he thought they might be armed, but he didn't think he was going to be hurt. So I took my pen and I scratched out the word "were" and inserted the words "might be."

The rest of the statement was signed without change. The portion left in the space for extra things that were not covered in the prepared part of the statement, that was typed beforehand, and Mr. Arnett signed it.

Q. Were any changes in that statement made in pencil?

A. No, sir, I don't know of any.

page 1987 } Q. The statement as introduced here is precisely as it was signed by Arnett?

A. To the best of my knowledge and belief, that is correct.

Q. What time was it when he signed the statement?

A. I would say it was about 8:30 at night. It might have been 9:00 o'clock.

Q. You notice that statement starts out there like it was going to be verified by a Notary Public, and it is not verified by a Notary Public. What is the explanation of that?

A. When I had the statement drafted in Huntington, I had hoped that I would be able to have all of them notarized. It soon became apparent that I just couldn't do it; that a Notary wouldn't always be available. So I didn't undertake to change the form of the statement. When the Notary wasn't there to take the man's oath, that portion of the statement wasn't filled in, and I just signed in as a witness.

Q. Was the Notary present when Arnett gave his statement?

A. No, sir.

The Court: Mr. Robertson, may I ask the witness a question in regard to the typewritten portion of that statement?

You say that was written in before he signed page 1988 } it. When was it written in?

The Witness: That morning.

Mr. Robertson: I was just going to ask him that, Your Honor.

page 1989 } By Mr. Robertson:

Q. Now I call your attention on page 3 of the statement to the paragraphs numbered 1 and 2. Was that space left blank when you had the form of the statement run off on a duplicating machine in Huntington?

A. I didn't follow your question, the first portion of it.

Alexander Hamilton Bryan.

Q. I say, I call your attention to paragraphs numbered 1 and 2 on the third page of Arnett's Statement and ask you when the form of the statement was run off in Huntington was that space blank?

A. That space was all blank, and this part in here was typed in Paintsville in Mr. Johnson's office.

Q. Is that the Mr. Johnson who was here in this case?

A. Yes, Mr. Billy Johnson.

Q. Does that explain the difference in the typing of the original statement and paragraphs 1 and 2 on page 3?

A. Yes. This portion was a prepared statement run off on a duplicating machine, mimeograph machine.

Q. Have you doctored that statement in any way since you took it from Arnett?

A. No.

Q. I think you have testified previously that the Virginia Mechanical Corporation is a wholly owned subsidiary of Laburnum Construction Corporation?

page 1990 } A. Yes, sir. I am not sure whether I did or not, but it is.

Q. What is the purpose of that company?

Mr. Mullen: Your Honor, we object to that. That is a separate corporation.

Mr. Robertson: I withdraw it and will reframe the question.

By Mr. Robertson:

Q. What kind of work, if any, does Virginia Mechanical Corporation do for Laburnum Construction Corporation?

A. Virginia Mechanical Corporation has agreements with the plumbers and steamfitters local union, the sheetmetal workers local union, the electricians local union, and they handle mechanical work in which Laburnum Construction Corporation is interested. That is the purpose of it.

Q. Do the profits and losses from Virginia Mechanical Corporation go back eventually to Laburnum?

A. Certainly.

Q. There has been introduced here as Plaintiff's Exhibit No. 22 a booklet entitled "Laburnum Construction Corporation, Richmond, Virginia, Construction Record." Does that influence also the construction records of Virginia Mechanical Corporation?

A. All the jobs that the Virginia Mechanical Corporation

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has had of any size or consequence have been page 1991 } Laburnum jobs.

Q. Is that why they are included in there?

A. That is right. They are treated as a part of the Laburnum jobs.

Q. Does that booklet show the joint ventures upon which Laburnum was engaged during the period covered by the booklet?

A. During the war we had a partnership arrangement with John T. Pettijohn Company, known as Laburnum-Pettijohn Associates. We performed about 31½ million worth of work together. Laburnum Construction Corporation also engaged in a joint venture with Riggs Distillate Corporation in Baltimore, performing work for American Viscose Corporation at Marcus Hook, Pennsylvania, Lewiston, Pennsylvania, and Martinsburg, West Virginia. That amounted to about a million and a half dollars or \$1,800,000.

Q. Does the booklet disclose the fact that those two jobs were joint ventures?

A. Oh, yes. It is proper to consider them as Laburnum jobs, but it should be shown that other people were interested, too.

Q. Mr. Bryan, you have testified quite fully about the trouble in Breathitt County, Kentucky. At any time during the period that you have testified about in this case did you promise the common laborers on the Breathitt page 1992 } County, Kentucky, job an increase of 10 cents per hour in wages?

A. I never heard anything about an increase of 10 cents an hour until approximately a year after the thing was over.

Q. Did you promise them any such increase?

A. I did not.

Q. When did you first hear of it?

A. When you and I were in Adrian, Michigan talking to Robert Poe.

Q. What did you hear then from him?

A. I asked Bob Poe about getting the laborers to sign the application blanks, what he had done, and he said he just asked them to sign and he told them he hoped to get them an increase of 10 cents an hour. I did not know that Bob Poe was doing that.

Q. During any time while Laburnum was at work in Breathitt County, Kentucky did you ever discharge any common laborer or anybody else on account of union membership?

Alexander Hamilton Bryan.

A. I never discharged a soul on account of union membership or non-union membership or for that matter anybody else. The superintendent looks after that.

Q. You testified about your conversation over the telephone with Hart on July 14, 1949, and at subsequent times. Did you ever question Hart's statement that he represented the common laborers?

A. He told me the 14th of July during our page 1993 } telephone conversation that he represented the laborers. Frankly, I didn't believe him. It has turned out from his testimony that at that time he only represented four laborers. The next time I talked to Mr. Hart was on the afternoon of July 26 at the railroad crossing, at the job site, and at that time I told Mr. Hart that all of our laborers, that all of our workers, practically all of our workers, were members of A. F. of L. unions or had made application to become members of A. F. of L. unions. Mr. Hart then said that the laborers were not in the union, and I said, "Well, they have all signed application blanks to get in the union, I understand." Mr. Hart said that didn't make any difference to him, whether they were in the A. F. of L. or not, he was taking over, that we were working in United Mine Workers territory, and he was going to take over the whole show.

* * * * *

Q. Mr. Bryan, you were present in the courtroom when I introduced those various sheets of tabulated figures which you had furnished the Defendants and which they had not put in evidence heretofore.

A. That is right.

page 1994 } Q. In order to point that up, have you prepared another set of figures that more or less summarizes and tabulates those various sheets?

A. Yes, sir. This was prepared in our office under the supervision of our auditors, Leach, Calkins & Scott.

Q. Is it correct?

A. The information is correct.

Mr. Robertson: I offer in evidence 19 sheets of tabulated figures attached together entitled "Laburnum Construction Corporation at Richmond, Virginia, statement of jobs awarded to Laburnum Construction Corporation, to its subsidiary Virginia Mechanical Corporation, to the firm of Laburnum-Pettijohn Associates, and to the joint venture of La-

Alexander Hamilton Bryan.

burnum Construction Corporation and Riggs Distillate and Company, Inc., during the period from January 1, 1942, to December 31, 1949," and showing the following with respect to each job: (a) sales or gross income; (b) direct job cost profit; (c) job profit or loss; and ask that that be marked Plaintiff's Exhibit No. 96.

Mr. Fred G. Pollard: No objection.

(The documents referred to were marked Plaintiff's Exhibit 96 and received in evidence.)

Mr. Robertson: The witness is with you.

Mr. Mullen: If Your Honor please, with respect to page 1995, regard to this last statement of course we have had no chance to look at it and we will have to make the same request that they made when they asked for an opportunity to examine it before examining the witness on that statement. We have another complication. Mr. Bryan has just been examined on two things—

Mr. Robertson: I think I will withdraw the statement if you want time for it as everything is in the other statement.

The Court: The statement is withdrawn.

(Plaintiff's Exhibit 96 WITHDRAWN.)

Mr. Robertson: What is your next complication?

Mr. Mullen: That relieves it.

CROSS EXAMINATION.

By Mr. Mullen:

Q. Mr. Bryan, when did you say you talked with Mr. Arnett in regard to this statement of his?

Mr. Robertson: Will you give me that back, Mr. Pollard, since we have withdrawn it?

(Document handed to Mr. Robertson.)

By Mr. Mullen:

Q. When did you talk to Mr. Arnett about the statement, about signing it?

A. The first time I saw Johnny Arnett in connection with the statement was on the night of Saturday—I think it was August 6. (Witness referring to calendar.) August 6, 1949.

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Q. When did he sign this statement?

A. At that time.

Q. When was this additional part on the third page written in?

A. That was written in in the morning.

Q. What morning?

A. August 6.

Q. August 6?

A. Yes.

Q. You saw him the night of August 6 and he signed it?

A. That is right. On the morning of August 6 I talked to Henry Starr, Paris Trimble, Bert Preston, and obtained statements from them. They all gave an account about what had happened, and the portions that I thought there would be no question about I had typed in in advance. I realized that I might have to change it, but it would be easier to do it that way and to make a change than it would be to write the whole thing out later. The wording on that is almost identical to the wording on some of the other statements.

Q. So that all of the language in here is your language and perhaps the language of Henry Starr or some of those people you talked to, and not the language of Arnett?

A. Well, I don't know what you mean by that. page 1997 } I prepared the statement trying to set out accurately what I understood happened. It was typed, it was presented to Johnny Arnett. We read it. I said, "Johnny, I want to be sure this is right and if there is anything here you think is wrong, let me know." We did make several changes. On some of the other statements we made many changes, but this one had only two. He said that he thought that was all right the way it was with these changes. We made the changes then and there and he signed it.

Q. You had a stereotyped form for the first page and a half for everybody to sign, made up from your point of view of what the case was or what you wanted it to be?

A. I don't know what you mean by my point of view. I was trying to set out accurately what I understood happened?

Q. And you did not know of your own knowledge that was what happened, but it was what you understood happened?

A. I wasn't out there at the time, but there were some statements that were made that were completely typed that are a little different from that, but the bulk of the people signed those statements.

Q. All the language in here is your language?

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A. I drafted it.

Q. You composed all of this?

A. I composed it, I drafted it and presented it to Johnny Arnett and he signed it. It was not altered except page 1998 } except for what is shown there on that statement.

Mr. Mullen: I have no further questions.

Mr. Robertson: No questions.

The Court: Stand aside, Mr. Bryan.

(Witness excused.)

Mr. Robertson: Mr. Hugh H. Baird, Jr.

Whereupon,

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called as a witness for Plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

The Court: How long will this witness take?

Mr. Allen: It shouldn't take over 15 or 20 minutes.

The Court: We might recess for about five minutes before we take this witness.

(Brief recess.)

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Baird, your name is Hugh Baird?

A. Hugh H. Baird, Jr.

Q. Do you live in Richmond?

A. I work in Richmond and live in Chester.

Q. What is your profession?

A. I am a certified public accountant.

Q. How long have you been a certified public accountant?

A. Since 1942.

page 1999 } Q. What firm of accountants are you with?

A. I am a partner in the firm of Leach, Calkins & Scott.

Q. With headquarters in Richmond?

A. With headquarters in Richmond.

Q. Does your firm do whatever accounting work is done for Laburnum Construction Corporation and Virginia Mechanical

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Corporation other than the accounting work done within their own organization?

A. We have audited their records for a number of years.

Q. Have you been assigned to that work in recent years?

A. That is right.

Q. At my request have you read the testimony of Mr. C. Howard Holt which was given in this case on February 8?

A. Yes, sir; I have.

Q. And have you collaborated with Mr. T. Coleman Andrews?

A. Yes, sir; I have.

Q. Have you been furnished a copy of Defendants' Exhibit No. 67, which is entitled "Laburnum Construction Corporation, condensed statement of operations for the years indicated"?

A. Yes, sir; I have.

Mr. Robertson: I have a number of copies of that exhibit and I wish to pass out copies to the jury so they page 2000 } may read the figures as we go along.

By Mr. Robertson:

Q. Do you agree or disagree with the testimony of Mr. Holt?

A. I cannot agree with either his computations or his conclusions.

Q. When you set up a tabulation of figures there for given years, as is done in Defendants' Exhibit No. 67 is there necessarily what you might call a slop-over from year to year or is there a clean-cut division from year to year?

A. In any construction accounting it is necessary to estimate the percentage of completion on jobs at the end of the year. For that reason there is a certain amount of estimate involved.

Q. I am going to ask that you discuss Defendants' Exhibit No. 67, item by item, and I suggest that you take the year 1949 for the reason that I believe that that is the year that Mr. Holt used in his discussion of these figures which he compiled. Just explain the tabulation there and why it is that you disagree with Mr. Holt.

A. The figure of sales includes all millings of the company on construction work, which includes not only the billings on lump sum contracts but also the entire billings on cost-plus contracts, cost-plus-fixed-fee or cost plus percentage. The

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cost of sales includes all costs which are directly chargeable to the job, including in the case of cost-plus contracts not only the actual cost of construction but also the cost of clerical and office expenses in connection with maintaining field offices, which under the terms of these cost-plus contracts are reimbursable 100 per cent plus the fee to the contract.

The gross profit includes all of the gross profit after the deduction of the cost, all cost, including as I said before these office and to some extent administrative expenses.

The administrative expenses include mainly salaries at the home office and other home office expenses and such general and administrative expenses as donations, dues, taxes, business licenses and other expenses which can in no way be charged to a job.

Q. Wait a minute. Before you leave that, why do you say that those administrative expenses cannot be allocated to any particular job?

A. There are a number of reasons. In the first place, the expenses are such that they bear no relationship to the volume of work. By comparing the amount of these administrative expenses for the years shown in Defendants' Exhibit 67 with the amount of sales for the respective years it will be noted that there is no relationship between these amounts. For instance, in 1942 the sales were \$1,800,000, the administrative expenses were \$28,500. In 1943, the sales dropped \$750,000, to \$1,054,000 and administrative expenses actually increased by slightly over \$500. Similarly in 1948 sales were \$3,675,000, and administrative expenses were \$87,765. In 1949 on the other hand sales dropped by \$2 million, and at the same time the administrative expenses went up over \$5,000. So there is no relationship at all between the amount of administrative expenses and the amount of sales.

Q. Do administrative expenses include home office salaries?

A. They do.

Q. If a contractor has a contract for cost-plus 5 per cent, is it to his advantage to allocate all the costs he can to that particular job?

A. It is certainly definitely to his advantage to do that because he can get reimbursed 100 per cent plus a five per cent fee. Not only that, but the actual mechanics of it may result in a reduction in the administrative expense by the fact that personnel who are charged to the administrative payroll may be transferred to the job payroll to keep the records at the

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job, resulting in a reduction of the administrative payroll and an increase in the job payroll, which is directly reimbursable.

Q. Suppose a construction company has a page 2003 } lump sum contract, do they try to absorb those costs in general overhead or to allocate them all they can to the job?

A. Generally, particularly where the lump sum contract job is located in the vicinity of the home office, it is much more practicable and much more expedient to perform these services at the home office and cut down the overhead on the job in that way. I think that has been done.

Q. Is it or is it not a fact that where you have your general administrative expenses include the home office administrative expenses, that it is possible to take on a largely increased volume of work without a corresponding increase in administrative expense?

A. It certainly is, and that would apply particularly, I believe, to cost-plus work, where these administrative expenses or job expenses are charged directly to the job.

Q. Would that mean for instance that if a man named Delinger had been working in the home office he could be transferred to superintendent at the job site and his salary charged against that particular job?

A. That is correct.

Q. Would it be an illustration of what you are saying to say that if a merchant sold \$100,000 worth of business a year and his administrative expenses were \$5,000, if in the following year he did \$200,000 worth of business his administrative expenses would not go up to \$10,000?

page 2004 } A. I think that is absolutely correct, and I think that is borne out by the ratio shown in Defendants' 67 which I have pointed out. I think it is true generally. I think that is the whole concept of volume production, that is, that a certain basic production or volume of business is required in order to meet the fixed overhead. Once that break-even point has been reached, a substantial amount of the gross profit on additional work becomes net profit because the administrative expenses will not go up in proportion to the gross profit. It seems to me that if Laburnum's gross profit from cost-plus work were increased \$25,000 with no increase in administrative overhead, it is a simple mathematical fact that they would have additional net profit of approximately \$25,000.

Q. From your study of Mr. Holt's testimony did you deter-

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mine whether or not he allocated general administrative expense to the Breathitt County work at the rate of 6.63 per cent?

A. That was his factor which he used in allocating administrative expenses to the Breathitt County work.

Q. In your opinion, was that sound accounting practice or unsound accounting practice?

A. No, sir. In the first place, as I have said before I don't think there is any way of allocating these expenses to the various jobs. Moreover, I think if any such allocation were attempted to allocate them prorata to all jobs page 2005 } without consideration of the nature of the contracts, which vary widely. Not only that, but in computing this 6.63 factor which Mr. Holt has used, he is by adding the figure of other income to the gross sales in effect duplicating in this gross sales portion of his factor certain rental income which was an internal charge. In other words, the rent was charged to the job and recovered 105 per cent from the job on these cost-plus jobs. So when he added this other income back to the sales, he has duplicated this factor, and it has increased the 6.63 considerably. In other words, a correct computation would show considerably less than 6.63.

Q. Do you mean he has charged rental of equipment into gross sales and charged it also into administrative expense?

A. It is already included in gross sales because on a cost-plus contract the contractor recovers the full amount of the rental in the sales.

Q. Where did he include it the second time?

A. When the contractor charges this rent on his own equipment used on the job, he credits other income and charges the actual cost of the sales. When he bills the contract to the owner he uses his cost of sales and adds five per cent. That includes 100 per cent of the rental charge on which the contractor has a profit. Since that is included in the sales originally, included in this \$1,643,000 for 1949, and of course the corresponding charge is also included in the page 2006 } other income. He has added these two sums together. In other words, if he is going to apply this other income, any other factor, it should be a reduction of the cost of sales or the overhead expense, rather than addition to the gross income.

Q. Does his theory mean in effect that for every dollar of increased business his overhead increases 6.63 per cent?

A. I think that is the impression he tried to convey.

Q. Have you made any computations of your own to figure

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what would have been realized in profit or loss on these Breathitt County jobs?

A. I have reviewed the computations of the profit on the Breathitt County work, the computations of the amount claimed for loss of profit, and I believe that they are in accordance with the experience on those jobs during 1949.

Q. Have you with you a copy of Defendants' Exhibit 66?

A. I have.

Mr. Robertson: I have some copies that I will pass to the jury.

page 2007 } By Mr. Robertson:

Q. Take the first item there, Damage for Loss of Fee on Contract for Construction of 25 Dwellings—\$534.19. What have you to say about the correctness or incorrectness of that figure, based on your knowledge of Laburnum Construction Company operations and your study of Mr. Holt's testimony?

A. As I understand that figure, that represents the difference between the fee, the contractual amount of the fee on this job, and the amount which had been realized by billings before the job was terminated; and if that is correct, this computation of \$534.19 is correct.

Q. Does what you say about that item apply to the item of \$319.67?

A. It does.

Q. Does it apply to the item \$250.00?

A. That was based on 5 per cent fee on estimated cost of \$5,000, and is mathematically correct.

Q. What about the item \$1,250?

A. That is also based on the 5 per cent fee on work estimated at \$542,500, and is mathematically correct.

Q. What about the item of \$27,125?

A. I would like to correct myself on that last item. I was referring to the \$27,125 item. That is also mathematically correct, based on the estimated cost of completion of this work.

page 2008 } Q. According to Mr. Holt's testimony, does he contend, in substance, that if Laburnum would continue cost-plus-5% contracts in Breathitt County, Kentucky, they would show a loss, until they had a tremendously increased volume, of approximately 1.63 per cent on each contract?

A. That is what he states, yes, sir.

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Q. So the more business—how high does he figure they would have to increase their volume to break even?

A. I think his figure was \$1,200,000.

Q. Do you agree or disagree with that?

A. I think he has misinterpreted the facts there, because in addition, your gross profit, after you have reached this break-even point in your volume, becomes practically 100 per cent net profit.

Mr. Robertson: The witness is with you.

CROSS EXAMINATION.

By Mr. Fred G. Pollard:

Q. As I understand it, Mr. Baird, what you are saying is that in 1949, from experience in previous years, Mr. Bryan or Laburnum Construction Corporation had reached the point where it could do additional work without increasing the overhead to any appreciable extent, and that all the gross profit from the additional business would amount to almost net profit?

A. I think that would depend in large measure page 2009 } on the type of contract. I certainly think on cost-plus-5% contracts they could have expanded their volume tremendously without increasing to any material extent their administrative overhead. Their administrative overhead for the whole period has increased fairly regularly, which reflects, I believe, the economic tendency rather than any increase in volume or variations in volume. The volume varies, as you know, from a low of \$734,000 in 1945 to a high of \$3,675,000 in 1948, without corresponding variations in administrative overhead.

Q. What you are saying, then, is that the work claimed on Defendants' Exhibit 66, which is before the Jury, the first items about which you have just testified, is work that could have been taken on by the Plaintiff without appreciably increasing his overhead, and that the fees on a cost-plus-5% basis from those jobs would have been almost net profit?

A. I think that is correct. I might—

Mr. Robertson: Let him finish his answer.

The Witness: I might point out, too, that these estimates in here do not include any estimate of profit the company would have made by the use of its own equipment.

Mr. Fred G. Pollard: I object to that. Plaintiff is not

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claiming any loss of profits from anything except that which is shown on that exhibit.

Mr. Robertson: I think he has a right to give his reason, Your Honor, what he is driving at.

page 2010 } The Witness: I think this loss of rental income would more than offset any increase—

Mr. Fred G. Pollard: Did Your Honor rule on that?

The Court: I haven't ruled on that. I would like to hear you on that.

Mr. Robertson: If I am wrong, I will ask the witness to correct me.

As I understand it—I am not an accountant—this witness said that Mr. Holt incorrectly allocated General Administrative costs to a particular job, and that he failed to show the profit on that job from rental of equipment; that he put one item in wrong and left the other item out wrong, and if you make the proper adjustment, they would about counter-balance each other.

Am I right or incorrect?

The Witness: I don't think so.

Mr. Fred G. Pollard: I don't think the witness ought to argue with the attorney. What the witness is trying to say is this—

Mr. Robertson: Suppose you let the witness say it.

The Court: Go ahead, Mr. Pollard.

Mr. Fred G. Pollard: —is that if he had done the work on cost-plus-5%, he would have had some direct expenses which would have brought it down to less than 5 per cent, but that

page 2011 } that would have been offset by a profit which the Plaintiff would have made on the rental of equipment. Anything about profits on rental of equipment is not in issue here. These are the only profits Plaintiff has claimed he has lost, and it is improper to bring anything in about any profit that he may or may not have made on the rental of equipment. Therefore, we ask that his answer be stricken and the Jury be instructed to disregard it.

Mr. Robertson: If Your Honor please, it appears that Mr. Pollard doesn't know what the accountant is talking about; I don't know what the accountant is talking about. It may possibly be that His Honor doesn't know what the accountant is talking about. So I would think that the accountant ought to be allowed to say for the benefit of us all, including the Jury, what he is talking about.

The Court: Read the question and answer.

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(The record was read by the reporter.)

The Court: Is the company asking for anything for the use of equipment?

Mr. Robertson: I don't know whether we are or not. We are trying to show whether there is a net profit or net loss from those jobs.

The Court: I will overrule the objection and allow the witness to continue.

Mr. Fred G. Pollard: Note an exception.

Mr. Robertson: Now, explain the difference between—

Mr. Fred G. Pollard: Now, listen, Your page 2012 } Honor, this man is not examining the witness.

The Court: You are exactly right. Go ahead, Mr. Pollard.

Mr. Robertson: You are exactly right. I apologize, Mr. Pollard.

Mr. Fred G. Pollard: I accept your apology, Mr. Robertson.

Mr. Robertson: Thank you, Mr. Pollard.

By Mr. Fred G. Pollard:

Q. Now, Mr. Baird, it is the first five items you have just testified—

A. That is correct.

Q. —that come at a time that you said when the overhead has reached a static point, and therefore the fee at 5 per cent on those five items, in your opinion, would be almost net profit?

A. I didn't say that administrative overhead had reached a static point. I say that I think the amount of that is determined lots more by economic conditions than by the volume of work, and particularly where the work is handled on a cost-plus-fixed-fee basis. I think, therefore, so far as the actual addition of this work, disregarding any economic tendencies, inflation, I think this additional work could have

page 2013 } been handled without any appreciable additional administrative expense which would be applicable to this work.

Q. And that, therefore, in your opinion, it is not proper to allocate administrative expenses as part of the cost of doing this work?

A. I don't think you can allocate in any way any administrative expenses to jobs, as I have pointed out in my answers to Mr. Robertson, because the nature of the jobs and the type

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of the administrative expenses are such that they lend to no basis of allocation.

Q. Do I understand that in your opinion, in 1949 the Plaintiff had about reached the break-even point, and as to these five jobs, in your opinion, any fees on the basis of 5 per cent as to them would have been practically net profit?

A. I think the fact that they had a profit of—what is it, some \$27,000—I think that figure is correct, isn't it; \$27,000 in 1949 on the volume of work which they did would indicate that they had passed the break-even point, and the addition of a greater volume would certainly not increase the administrative expenses proportionately. As a matter of fact, it would increase them very little, and for that reason, the addition of some \$25,000 gross profit would result in practically an increase of \$25,000 net profit.

Mr. Robertson: The figure for 1949 shows \$57,000.

Mr. Fred G. Pollard: I ask the Judge to instruct the Jury to disregard Mr. Robertson's statements.

page 2014 } Mr. Robertson: If Your Honor please, I think that is entirely a proper remark, when the witness is asked to look at figures which are before him.

The Court: Let the witness look at his figures.

The Witness: The correct figure is \$57,000, Your Honor.

By Mr. Fred G. Pollard:

Q. Mr. Baird, the Plaintiff has stated that this work was awarded to him in October of 1948, and that his contracts were cancelled on August 4, 1949. How could he have known back in October, 1948, that the work for which he claims damages is the work which would have been taken on after the break-even point, and that it is for this work that he says it would all have been net profit? How could he have known that back in 1948?

A. He didn't know it, but he can't turn down a job just because he doesn't have enough other jobs to pay his administrative expenses. He has to take every job that comes, until he builds up his volume enough to pay his administrative expenses and pay his overhead. He wouldn't be justified in turning down any work if it is going to produce any gross profit at all, because his administrative expenses are going to continue as long as he stays in business.

Q. Are you familiar with Plaintiff's Exhibit No. 34, Mr. Baird, which is a statement showing the contracts with Pond Creek Pocahontas Company, Island Creek Coal Company, and various associated companies?

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Mr. Robertson: Wait until I get the exhibit, please.

Mr. Fred G. Pollard: I have it here, sir.

Mr. Robertson: May I pass a copy of this to the Jury so they can look at it while you are examining the witness about it?

Mr. Fred G. Pollard: Yes.

The Witness: Is that the one which shows a profit of \$58,000?

Mr. Fred G. Pollard: Yes.

By Mr. Fred G. Pollard:

Q. Those figures include the statement of Virginia Mechanical Corporation, do they not?

A. Yes, sir.

Q. Have you made a statement up, of any kind, to show just the figures for Laburnum Construction Corporation?

A. I have not prepared any such statement. I think the figures could be determined. I am sure they could.

Mr. Fred G. Pollard: Mr. Robertson, have you the exhibit showing the analysis of gross profit for 1948 and 1949?

Mr. Robertson: It is probably over there.

(Discussion off the record.)

page 2016 } By Mr. Fred G. Pollard:

Q. Mr. Baird, I hand you Defendants' Exhibits 68 and 69, which are the analysis of gross profits of the Plaintiff for the years ended December 31, 1949, and 1948, respectively, and Plaintiff's Exhibit No. 95-7, which is Analysis of Gross Profit of the Plaintiff for the year ended December 31, 1947.

(Document shown to Mr. Robertson.)

Mr. Robertson: If Your Honor please, I think we ought to be heard on this, what they are trying to introduce now as evidence before the Jury.

* * * * *

page 2017 } (The following proceedings were had in Chambers:)

Mr. Robertson: If Your Honor please, the Defendants are

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offering now a tabulation entitled "Laburnum Construction Corporation, Richmond, Virginia, statement showing contracts with Pond Creek Pocahontas Company, Island Creek Coal Company, and various associated companies, and further showing job profit or loss of Laburnum Construction Corporation on each contract."

There are columns entitled "contract date" corresponding with our exhibit No.—

Mr. Fred G. Pollard: I think it is Exhibit 33, but I wouldn't be certain.

The Court: 34, isn't it?

Mr. Robertson: We will supply that.

A column entitled "Job No." corresponding with our Exhibit No. 34, a column entitled "Description" corresponding with our Exhibit No. 34, the column entitled "Amount" corresponding with our Exhibit 34, and the column "Profit or Loss" corresponding with our Exhibit No. 34

Mr. Fred G. Pollard: May I add one other thing, that this statement here in the heading, everything up here, corresponds to that exhibit also.

Mr. Robertson: I understand that all of those figures include the Virginia Mechanical Corporation for the reasons I have stated, because it is a wholly owned subsidiary page 2018 } diary. The Defendants now wish to pull out the part of that done by Virginia Mechanical Corporation and reduce these amounts accordingly and then show a job profit or a job loss and a percentage. We say that if they want to do that, they can make their own tabulation through their own accountant, but that they have no occasion to do it through this witness now on the stand.

Mr. Fred G. Pollard: Are you through, Mr. Robertson?

Mr. Robertson: Yes.

Mr. Fred G. Pollard: Virginia Mechanical Corporation, Your Honor, is not a party to this suit and any profit it may make, in order for it to seek its way to claim it, has to come by way of dividends, and any losses it may have, Laburnum Construction Corporation is not responsible for. It is totally immaterial and improper and not a part of this suit in any way for the profits or losses of Virginia Mechanical Corporation to be brought into the case. They have been brought in and now we want to get them out of the case. The three statements that the Plaintiff was given before we retired, that is the gross profit analysis for 1947, '48, and '49, contained the figures we want which apply solely to Laburnum Construction Corporation. All the witness will have to do is to

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look at the job number for the applicable year and read off the figure and the percentages in the exhibits which were introduced by the Defendant, one of which was page 2019 } introduced by the Plaintiff, and as he reads them off I will write them in and when it is completed we will offer it in evidence as an exhibit.

Mr. Robertson: If Your Honor please, if it is already in evidence, then it is not rebuttal or surrebuttal here.

Mr. Fred G. Pollard: It is in rebuttal to what—

Mr. Robertson: And if they want to make a separate exhibit with their own accountant they can call him back and do it.

Mr. Fred G. Pollard: Your Honor, it is in evidence here. Their exhibit says this shows the job profit or loss of Laburnum Construction Corporation on each contract and that is an erroneous statement.

Mr. Mullen: It is in cross-examination of your witness, and we have a right to go into those matters.

Mr. Robertson: Yes, but haven't a right to make my witness—

Mr. Mullen: It is not in rebuttal. We are simply cross-examining the witness you put on.

Mr. Robertson: You have a right to a fair cross-examination of the witness but you haven't a right to make our witness get up there and paint a mural for you.

Mr. Mullen: Paint a what? We have a right to examine him on the figures and to bring them out and the Virginia

Mechanical Corporation you can't ignore cor-
page 2020 } porate identity.

Mr. Allen: If Your Honor please, the real situation as I see it here is this: Mr. Bryan testified that the Virginia Mechanical Corporation was a wholly owned subsidiary of Laburnum Construction Corporation and that it was merely a means of doing and carrying on a part of Laburnum Construction's business, that Virginia Mechanical Company did not work on any jobs that were not Laburnum Construction Company jobs. It is settled in the law that one corporation may carry on its business through another corporation which is a separate and distinct entity. There was a recent case here in the United States Circuit Court of Appeals where that identical thing was done. One corporation organized another corporation to carry on a part of its business, and although they were two separate and distinct entities and kept separate sets of books, the Court held that the second corporation was merely carrying on the business of the other and therefore held that service on an officer of the second

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corporation was service on the other because they were all doing the same business and the second was organized for the purpose of carrying on a certain part of the business of the first.

All of this business was Laburnum's business. The subsidiary was organized solely for the purpose of carrying on a part of Laburnum.

If they want to introduce an exhibit or make page 2021 $\frac{1}{2}$ up one, in the first place it is not proper on rebuttal. It is not proper to come from our witness. If they want to claim that we couldn't claim these damages here which they claim ought to be claimed in the name of the Virginia Mechanical Corporation, it was a part of their main defense. We are on our rebuttal, and if they have anything after this it would be merely surrebuttal. They can't take one of our rebuttal witnesses and go into evidence which they should have produced in their case in chief. It is all Laburnum's business. Whether it was or not, at this stage of the case they can't bring it out either from our witness on rebuttal or in surrebuttal.

That is all I have to say.

Mr. Mullen: Is Laburnum liable for the debts of Virginia Mechanical Corporation?

Mr. Allen: Well, I don't think that question is pertinent, but in the case that I am talking about they held the parent corporation liable for the obligations of that subsidiary.

Mr. Mullen: You have to take the facts in each case. Mr. Bryan did not say that Virginia Mechanical Corporation did all its work for Laburnum. He said it did most of it, its principal work.

Mr. Allen: My recollection was—

Mr. Mullen: He said principal work. He said page 2022 $\frac{1}{2}$ mainly contracts.

Mr. Allen: My recollection is that he said that the Virginia Mechanical Corporation worked only on Laburnum jobs. That is the way he expressed it.

Mr. Mullen: Mainly.

Mr. Robertson: Call him in here and ask him. That is my recollection the same as yours, Mr. Allen.

The Court: I believe this matter can be taken care of when we argue instructions. The Court is of the opinion to overrule the objection and allow questions by the Defendants.

Mr. Robertson: Plaintiff excepts for the reasons stated.

Mr. Fred G. Pollard: There is one other thing that should be taken up at this time, we believe. Your Honor has directed

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that witnesses be excluded. The Plaintiff recognized that fact this morning when they called the Court's attention to the fact that Mr. Baird was sitting in the courtroom and asked him to leave. Mr. Baird has testified that he read Mr. Holt's testimony, and it seems to me that circumvents the Court's ruling that the witnesses should be excluded, and his testimony should be stricken for that reason.

Mr. Robertson: If Your Honor please, I never heard such an argument in my life. When you bring a highly technical expert witness to the stand you always have him read the testimony of the other experts to say wherein he
page 2023 } agrees or wherein he differs. It is just common, ordinary practice. It is very largely the practice in Virginia to allow experts to stay in the courtroom. I didn't know Mr. Baird was in there this morning. I called it to the attention of the Court. He left before we had anything to say about any accounting questions. How could he say wherein he differs or wherein he agrees with Mr. Holt unless he knew what Mr. Holt had been talking about? It is not on the facts of the case. It is on the principles of accounting.

Mr. Mullen: You could have asked him when he was on the stand.

Mr. Robertson: Yes, I asked him on the stand and I am going to ask Coleman Andrews the same thing.

Mr. Allen: I never heard of a rule, Your Honor, that would prohibit a lawyer from talking to another witness whom he proposed to call in rebuttal and relating to him the testimony of the witness whom he expects to rebut. You couldn't have any rebuttal testimony if you couldn't do that.

Mr. Robertson: I would be greatly surprised if these gentlemen here haven't gone over this case very fully with Mr. Holt before they put him on the stand and let him read things and told him about all the testimony. Else how could he have come here and testified as he did. They were very remiss in their duty if they didn't do it. They were bound to have done it or he couldn't have testified.

Mr. Mullen: You are mistaken.

page 2024 } Mr. Robertson: You told him about it.

Mr. Mullen: Not a witness of ours read one line of testimony taken in this case.

Mr. Robertson: Neither have ours, except Baird and Coleman Andrews. I had them read it on purpose.

Mr. Mullen: No two witnesses of ours have ever been questioned by us in the presence of each other.

The Court: Gentlemen, I will overrule the objection.

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Mr. Fred G. Pollard: Note an exception.

page 2025 } (The following proceedings were had in open court.)

Mr. Fred G. Pollard: Mr. Robertson, did you hand the Jury a copy of Plaintiff's Exhibit No. 34?

Mr. Robertson: Is that the one which shows \$58,000?

Mr. Fred G. Pollard: Yes.

Mr. Robertson: Yes, I did.

By Mr. Fred G. Pollard:

Q. Mr. Baird, I hand you a copy of Plaintiff's Exhibit 34, which states, in part, "And Further Showing Job Profit or Loss of Laburnum Construction Corporation on Each Contract." (Document handed to witness.)

Is that a correct statement in the heading, that it is the job profit of Laburnum Construction Corporation on each contract?

A. You are referring, I take it, to the inclusion of profits of Virginia Mechanical, is that correct?

Q. That is correct.

A. It includes the profits of Virginia Mechanical Corporation.

Q. During the recess, have you filled in on this chart here what the gross profit of the Plaintiff, Laburnum Construction Corporation, is on those jobs, excluding that of Virginia Mechanical Corporation?

A. That is right.

Q. And you have also filled in what should be page 2026 } substantially the percentage of gross profit earned by Laburnum Corporation on those jobs?

A. That is correct.

(Chart shown to Mr. Robertson.)

Mr. Fred G. Pollard: I offer it in evidence, Your Honor, as Defendants' Exhibit No. 70.

Mr. Robertson: No objection, Your Honor.

The Court: There is no objection.

Mr. Fred G. Pollard: Which is entitled, "Laburnum Construction Corporation, Richmond, Virginia—Statement Showing Contracts with Pond Creek Pocahontas Company, Island Creek Coal Company, and various Associated Companies, and Further Showing Job Profit or Loss of Laburnum Construc-

Hugh H. Baird, Jr.

tion Corporation on each Contract," and state that this exhibit has been added to by the witness, Mr. Baird, showing the actual amounts of Labarnum Construction Corporation and its gross profit on those jobs after excluding the gross profit of Virginia Mechanical Corporation.

(The document referred to was marked Defendants' Exhibit No. 70 and received in evidence.)

By Mr. Fred G. Pollard:

Q. Mr. Baird, would you refer to Exhibit No. 33—

A. Thirty-three? I don't have that.

Q. Thirty-four—and refer on there to Job No. 322. It has been testified by Mr. Bryan that the Plaintiff's page 2027 } maximum fee under that contract was \$12,000.

A. That is correct.

Q. And that his profit or loss, which shows up in the analysis of gross profit and loss as a gross profit, was only \$10,232.48.

A. That is right.

Q. And that the reason for this \$10,000 figure being less than \$12,000 is that there were certain direct costs on that job for which the Plaintiff was not reimbursed.

Can you tell me whether or not the job costs on that job, No. 322, for which the Plaintiff was not reimbursable, took into consideration the direct job costs for which the Plaintiff was not reimbursable on Jobs 323, 326, and 340?

A. I couldn't answer that, simply because these jobs were operated as a group, and whatever non-reimbursable expenses they may have had out there on a job could hardly be broken down between the several jobs, so they were all charged together to the major job out there.

Q. Mr. Baird, Mr. Holt has testified that when you consider those four jobs together, the gross profit averages 3.9 per cent. You wouldn't dispute that, would you?

A. I wouldn't have any basis for disputing it. I haven't computed it.

Q. But it would simply be a matter of adding up the cost of doing the work on the four jobs, and the gross page 2028 } profit, and finding out the relation?

A. That is true.

Q. You understand, Mr. Baird, do you not, that the Plaintiffs did not complete their work on Job No. 322?

A. No, I didn't understand that. I understood he didn't complete the work on Job 340. I am not familiar with the status of Job 322.

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Q. Is it your understanding that on these four jobs, the basis of the contracts was cost-plus-5%?

A. It was a maximum of \$12,000 in the case of Job 322, that is right.

Q. The figures that you filled in as gross profit are simply the gross profit which the Plaintiff had on that job, percentage of gross profit?

A. That is right. You are speaking of the 4.76 in the case of those last three jobs?

Q. Yes.

I refer now to Plaintiff's Exhibit No. 33, which I hand you. (Document handed to witness.)

Mr. Fred G. Pollard: Mr. Robertson, this is a copy of Plaintiff's Exhibit No. 33. Have you any objections if I use it?

Mr. Robertson: No.

By Mr. Fred G. Pollard:

Q. Mr. Baird, the Plaintiff has claimed damage 2029 $\frac{1}{2}$ ages on work which it says it would have gotten, which Mr. Salvati said he would give Mr. Bryan, in the amount of \$542,500. Mr. Salvati has testified that this work amounted to \$617,500. There is a difference in the figures on which the Plaintiff claims damages and the list that Mr. Salvati gave, of \$75,000. Mr. Bryan testified that he took off \$50,000 because he built 25 of the 200 houses, and the other item to make up the \$75,000 is the damages which the Plaintiff says that it would have gotten if it had built the installation of the concrete foundation at Coal Plant No. 2. It claims a fee of \$1,250 on the 5 per cent basis, if that job had been done for \$25,000. It is listed on page 23, and it has been deleted from Mr. Bryan's claim for damages.

I refer to the Machine Shop, for which the estimated cost is \$60,000. There has been no testimony in this case that the machine shop was built. Is there any way you could determine what Mr. Bryan would have made on that job if he had taken it, in view of the fact that there is no testimony that the shop has been built?

A. I am afraid I don't follow your question. It is a mathematical certainty that if he took a \$60,000 job at cost-plus-5%, he would have a gross profit of \$3,000. More than that, I don't know.

Q. If the job had been built, you couldn't say that he would have gotten that, though, could you?

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page 2030 } A. No, I can't say that he would or would not
have gotten this work. That is outside of my
knowledge.

Q. What I am saying is, if there is no evidence that it has
been built, you couldn't testify what profit he would have
made on it?

A. I can testify that if he got \$542,000 worth of work at 5
per cent gross profit, he would have made 5 per cent of the
\$542,500. I can't testify that he would have gotten the work.

Mr. Robertson: Let him finish, please, before you inter-
rupt.

Mr. Fred G. Pollard: I beg your pardon. Are you
through?

The Witness: Yes.

By Mr. Fred G. Pollard:

Q. You say if he built the machine shop at \$60,000 on the
basis of cost-plus-5%, he would have had a gross profit of
\$3,000?

A. That is right.

Q. Is there any way you can estimate, from that \$3,000
gross profit, what his net profit would have been, with any
reasonable certainty?

A. I can estimate that it would be substantially \$3,000.
There might be other non-reimbursable costs, such as in the
case of Job 322, but the chances are they would be minor.

Q. But you don't know whether they would be
page 2031 } minor. You don't know what those direct costs
might be, do you?

A. No, I have no way of ascertaining them.

Q. You can't say, then, with any reasonable certainty what
they would be.

A. I can say that he would have a gross profit of \$3,000,
and based on past experience and on the fact that his adminis-
trative costs were already covered by his earnings on past
contracts and there is no reason to expect any substantial in-
crease in them, that in all probability his net profit would be
substantially \$3,000.

Q. You say that in spite of the fact that his previous work
in Kentucky, from Mr. Holt's testimony, averaged a gross
profit of only 3.9 per cent, which would be approximately
\$2,300?

A. That is true, but your principal amount of non-reim-
bursable costs are included in the first job, in the major job.

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We have no reason to believe that any further non-reimbursable costs would come up. There might be. There is no way in the word for anyone to tell.

Q. So you can't tell with respect to that job whether or not there would be any reimbursable costs.

A. No, sir.

Q. Does the same apply to the warehouse at \$12,000?

A. Certainly.

page 2032 } Q. And the warehouse building at \$2,500?

A. Certainly.

Q. And to all of the rest of the jobs listed in Plaintiff's Exhibit No. 33?

A. Certainly.

Q. But if this work has not been done and you don't know what the cost was or what it would be, you of course could not determine even the gross profit, could you?

A. You can estimate your gross profit based on the terms of the contract. That is as far as you can go.

Q. How can you estimate the gross profit on buildings on which there is no evidence they were ever built?

A. You can estimate it by the terms of the contract.

Q. If they were never built, there is no contract, is there?

A. Whether or not there is a contract is something beside my knowledge of the affair. I understood that this matter was already decided on the amount of the prospective additional work. I don't see why I should be asked to testify to support that.

Q. Mr. Baird, you do all of the accounting work for the Plaintiff?

A. That is correct.

Q. Do you prepare its tax returns?

A. That is correct.

page 2033 } Q. Have you ever prepared a tax return for the State of Kentucky for the work that the Plaintiff did in Kentucky in 1948 and 1949?

Mr. Robertson: We think that is directly against the former rulings of the Court, Your Honor. Kentucky taxes are not involved in this damage suit.

Mr. Pollard: Your Honor's ruling was that we were not entitled to see the tax return. That is the only extent to which Your Honor has ruled.

The Court: What is the question?

Mr. Robertson: They are trying to do indirectly what the Court said they couldn't do indirectly.

T. Coleman Andrews.

The Court: Don't answer the question until I pass on it.

Mr. Pollard: What I am leading up to, I am going to ask this witness, if the Court will allow it, if the Plaintiff reported any income tax return in Kentucky, and if so what it was, because he had only four jobs in Kentucky and if he didn't report any taxes out there, then it means he didn't make any profit out there. I think we are entitled to show that to the jury, that he hasn't made any profit out there, if that is the case.

Mr. Robertson: If Your Honor please, that is exactly against the rulings of the Court in chambers time and again throughout the case, because what the tax situa-
page 2034 } tion is in Kentucky nobody in this room knows so far as I am concerned, and it hasn't anything to do with it, any more than these figures have anything to do with the Virginia tax return or the federal tax return. That is an entirely different matter, and all sorts of entirely different matters come into tax returns.

The Court: The objection is sustained.

Mr. Pollard: Note an exception.

No further questions.

Mr. Robertson: Stand aside.

(Witness excused.)

Mr. Robertson: T. Coleman Andrews.

Do you want Mr. Baird to stay in or go out?

The Court: I reckon you had better let him go out.

(Mr. Baird left the courtroom.)

page 2035 } Whereupon

T. COLEMAN ANDREWS

a witness called in rebuttal for Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Robertson:

Q. Mr. Andrews, your name is T. Coleman Andrews?

A. That is right, sir.

Q. Are you the senior partner of the accounting firm of T. Coleman Andrews & Company of Richmond and other places?

A. Richmond and Roanoke.

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Q. Are you a certified public accountant?

A. Yes, sir.

Q. How long have you been a certified public accountant?

A. Since 1921.

Mr. Robertson: Unless anybody desires me to qualify this witness further, I offer him as a first-class certified public accountant.

The Court: Mr. Andrews, speak a little louder. I think the jury is having difficulty hearing you.

Mr. Mullen: We raise no question as to his qualifications.

By Mr. Robertson:

Q. Are you at this time president of the American Institute of Accountants?

page 2036 } A. Yes, sir.

Q. Mr. Andrews, at my request have you read the testimony which Mr. Holt gave in this case?

A. Yes, sir.

Q. Have you collaborated in your consideration of his testimony with Mr. Hugh Baird, who just testified?

A. Yes, sir.

Q. Have you before you a copy of Defendants' Exhibit No. 67, which is this one (showing document)?

A. I don't know what the number of it is. I have a statement which is similar in appearance to that. You better let me check it to see if they are the same.

This appears to be a duplicate of that Exhibit 67.

Q. If Virginia Mechanical Corporation is a wholly owned subsidiary of Laburnum Construction Corporation, through which agency Laburnum Construction Corporation does its plumbing and electrical work, do you think it is permissible accounting practice to consolidate the financial statements of those two companies if you want to?

A. In the matter of accounting of a wholly owned subsidiary of a corporation you do put the two together for accounting purposes usually.

Q. Have you analyzed Defendants' Exhibit No. 67 in the light of Mr. Holt's testimony regarding it?

A. Yes, sir.

Q. What do you think of it?

page 2037 } A. Well, that puts it rather bluntly. I disagree with Mr. Holt's analysis, and I disagree in this respect: As I get Mr. Holt's testimony it is in effect that if the ratio percentage of overhead—and I would like to

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discuss overhead in relation to this question later—if that percentage of overhead remains constant, and if that percentage of overhead is in excess of the amount of fee added to work done, then no matter how much fee you add you would be losing more and more money. That is the understanding I get from his testimony. In other words, to reduce it to specific terms, I believe Mr. Holt figured that the overhead in this case was 6.63 per cent. I believe Mr. Baird said yesterday he had come to some other conclusion, some small difference. I think Mr. Holt figured, as I recall his testimony, there is a question of 5 per cent fees on work that this company did not do but might have done under certain circumstances. Mr. Holt testified that in as much as the overhead rate was 6.63, the company would have lost money even if it had gotten this business which it says it would have done under some circumstance or other.

I don't agree with that point of view. I say I don't agree with it. I think as a hypothesis perhaps that is a correct statement, but I think the hypothesis is wrong, seriously wrong.

In the first place, to grant that hypothesis page 2038 } would be to say that overhead moves up and down with the volume of business. That isn't true. The amount of business that a given volume of overhead will carry varies greatly. For instance, this morning I went back to a case that I had recently, and this occurred, to illustrate the point: In one year the volume of business rose 65 per cent. In that same year the overhead rose only 10 per cent. In other words, it is conceivable that a plant or a business can operate at 80 per cent of its capacity on the same overhead that it would cost it to operate at 40 per cent. So overhead is flexible in percentage while it is inflexible in amount. Therefore, to say that this situation here would have produced a loss, that is, this additional business that this company says it didn't get would have produced a loss, in my opinion is a wholly incorrect conclusion.

I think the principle that I have in mind and have explained here is very clearly illustrated by this Exhibit 67. For instance, in 1948 the company did \$3,875,000 worth of business on an overhead or administrative expense, whatever you are calling it here, of \$87,765, whereas in 1949 it did less than half of that amount of business and its overhead was still \$92,000. So I think it is perfectly obvious from this statement itself that this company might have taken on a very substantial amount of business above the \$1,643,000 that it

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actually did according to this exhibit, without
page 2039 } having increased its overhead at all, and it might
conceivably have reached the point where its
overhead ratio instead of being 6.63 would have been a great
deal less than that, perhaps not over half of that figure.

In other words, it is a case of simple arithmetic. You have
two factors in the calculation of a percentage relationship, and
if one factor moves upward while the other remains constant,
that is, if the amount that you are dividing into another
amount moves upward, then your resulting percentage is go-
ing to move downward, for the simple reason that 50 divided
into 100 gives you 2. If you increase the 50 to 100, 100 di-
vided into 100 gives you 1. So as you move your factors your
percentage is naturally affected.

That is the situation here as I see it.

I say, therefore, that I think that the conclusion drawn by
Mr. Holt in his testimony is unrealistic. Perhaps it might
be well to go on further with some further illustrations. Take
a lawyer, for instance, or an accountant, they can probably
double the volume of the business they handle through the
office without increasing their overhead. The banks might do
the same thing. They might not double the volume but they
certainly wouldn't double their overhead. If they did, they
wouldn't stay in the banking business very long.

I think another illustration, another thing we
page 2040 } might use to illustrate the point is that as a mat-
ter of investments, banks vie with each other
for a different one-eighth or a quarter of a per cent in in-
terest. That doesn't mean if they make only a quarter of
one per cent or a half of one per cent or one per cent on a
loan, it doesn't mean that they are going to lose money be-
cause their overhead is 20 per cent. It doesn't add up that
way. That isn't the mathematics of it. So it is perfectly
possible in this situation for this company to have taken on
additional business without increasing its overhead. In any
event, no businessman should ever look at his overhead as
being something that is inflexible as to ratio. Unhappily, it
is inflexible as to amount and that is what has broken an awful
lot of business in this country, and that is what every busi-
ness man is doing, struggling to get enough gross profit to
cover that overhead. There are a lot of cases on record where
people apparently have sold goods for less than it cost them
to produce them and still they made money, and the reason
for that is that they sold them for more than the direct cost
of production, thereby giving themselves a margin for over-

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coming the overhead cost of the business and producing some profit.

Q. As I understand Mr. Holt's testimony, he said that general overhead, for instance, in the operation of Laburnum's home office for its activities generally should be allocated to the work in Breathitt County, Kentucky. Is that page 2041 } sound accounting principle and practice or not?

A. May I hear the question again, please?

(The pending question was read by the reporter.)

The Witness: In my opinion it is not sound and moreover it just isn't done. In a contracting business you figure up the direct costs of your job and you charge those to the job, and you figure up what the billing price is and you mill your customer with it. It would be somewhat difficult for any contractor to figure on how much overhead to add to a particular job when he doesn't know how much volume he is going to do. He knows he has to recover something over and above his direct costs, but he is in a competitive market. He can't recover any more than his competitors are going to let him recover. Therefore, he is going to have to get enough business so that the volume of dollars of profit is going to exceed the volume of dollars of his overhead. In this case here it would accomplish no purpose to add a part of overhead to the business done in Kentucky because if there is a gross profit in business that could be had, then that gross profit is going to add to the margin by which the total gross profit exceeds the amount of so-called overhead.

In other words, to put it more simply, the overhead is not affected by the amount of revenue involved in these so-called Kentucky jobs. If that money comes in, it is just that much more money to cover the overhead. If it doesn't page 2042 } come in, the overhead is going to be there anyhow. So the argument, it seems to me, is about the amount of gross profit involved in these jobs.

Q. Mr. Andrews, I refer you to Defendants' Exhibit No. 66. I don't know whether you have a copy of that or not.

A. I do not have (handed to witness).

Q. As I understand Mr. Holt's testimony, it was that if Laburnum had completed the first five items, I think it was, that Laburnum would have lost money because it was cost-plus 5 per cent, and the way he allocated the general overhead to the construction work was 6.67 per cent. Therefore, the more work he did, he would keep on losing 1.67 per cent and

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therefore the quicker he got out of business and folded up the more money he would make. Is that sound accounting theory, I mean?

page 2043 } A. I think that it is rather an unsound theory for the simple reason that the overhead is going to be there anyhow, whether he does this business or whether he doesn't. If he does the business, he would be that much better off. If he doesn't, he would be that much worse off. The overhead does not depend upon his completing these jobs. He already has it. It is one of those things that is as inexorable as death and taxes. It is there, and you can't get away from it. If he finishes the business and makes whatever amount of fee or profit there is in that, he is that much better off. If he doesn't get it, he is that much worse off because the overhead is going to be the same anyhow.

Mr. Robertson: The witness is with you.

Mr. Pollard: No questions.

Mr. Robertson: Stand aside.

(Witness excused.)

Mr. Robertson: We rest.

Plaintiff rests.

Mr. Mullen: We may have an additional stipulation to offer.

Mr. Robertson: If we object to the admissibility of it, we will take it up with the Court.

Mr. Mullen: If Your Honor please, I notice it is about a quarter to one. We would like to confer a few minutes about whether there is anything else we want to do.

page 2044 } The Court: We will recess for five minutes.

(Brief recess.)

The Court: Let the record show that this stipulation is filed, and I will mark it filed.

Mr. Mullen: Defendants rests.

Defendant rests.

The Court: Sheriff, you may adjourn Court until Thursday morning at ten o'clock.

(Whereupon, at 12:45 o'clock p. m. the jury was excused until 10:00 o'clock a. m., Thursday, February 15, 1951, following which there was an unreported conference in chambers, at which it was agreed that the Court and counsel would meet at 10:00 o'clock a. m., Tuesday, February 13, 1951, to discuss instructions to the jury.)

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(End of Volume III.)

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